

Department of the Treasury Internal Revenue Service

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

Open to Public Inspection

The organization may have to use a copy of this return to satisfy state reporting requirements

A For the 2006 calendar year, or tax year beginning 2006, and ending

Form 990 header section containing organization name (WASHINGTON LEGAL FOUNDATION), address (2009 MASSACHUSETTS AVE., N.W., WASHINGTON, DC 20036), EIN (52-1071570), and website (WWW.WLF.ORG).

Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances (See the instructions)

Main table with 21 rows for revenue, expenses, and net assets. Includes sub-rows for contributions, program revenue, investment income, and special events. Total revenue is 4,856,175 and total expenses is 3,470,270.

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.

Form 990 (2006)

SCANNED JAN 0 2 2008

RECEIVED IN CORRES IRS - OSC 613 NOV 28 2007

Part II Statement of Functional Expenses

All organizations must complete column (A). Columns (B), (C), and (D) are required for section 501(c)(3) and (4) organizations and section 4947(a)(1) nonexempt charitable trusts but optional for others (See the instructions)

Do not include amounts reported on line 6b, 8b, 9b, 10b, or 16 of Part I		(A) Total	(B) Program services	(C) Management and general	(D) Fundraising
22a	Grants paid from donor advised funds (attach schedule) (cash \$ _____ noncash \$ _____) If this amount includes foreign grants, check here <input type="checkbox"/>				
22b	Other grants and allocations (attach schedule) (cash \$ _____ noncash \$ _____) If this amount includes foreign grants, check here <input type="checkbox"/>				
23	Specific assistance to individuals (attach schedule)				
24	Benefits paid to or for members (attach schedule)				
25a	Compensation of current officers, directors, key employees, etc. listed in Part V-A (attach schedule)	624,063.	266,158.	233,092.	STMT 4 124,813.
25b	Compensation of former officers, directors, key employees, etc listed in Part V-B (attach schedule)				
25c	Compensation and other distributions, not included above, to disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B) (attach schedule)				
26	Salaries and wages of employees not included on lines 25a, b, and c	782,844.	643,660.	86,074.	53,110.
27	Pension plan contributions not included on lines 25a, b, and c	817,228.	528,485.	185,393.	103,350.
28	Employee benefits not included on lines 25a - 27	71,794.	46,428.	16,287.	9,079.
29	Payroll taxes	70,981.	45,902.	16,102.	8,977.
30	Professional fundraising fees				
31	Accounting fees	92,858.		92,858.	
32	Legal fees	32,677.	32,677.		
33	Supplies	118,683.	76,750.	26,924.	15,009.
34	Telephone	56,303.	36,410.	12,773.	7,120.
35	Postage and shipping	21,171.	4,073.	1,358.	15,740.
36	Occupancy				
37	Equipment rental and maintenance				
38	Printing and publications	572,015.	547,145.		24,870.
39	Travel	42,429.	35,324.	7,105.	
40	Conferences, conventions, and meetings				
41	Interest				
42	Depreciation, depletion, etc (attach schedule)	74,335.	48,071.	16,863.	9,401.
43	Other expenses not covered above (itemize)				
43a	<u>INSURANCE</u>	34,555.		34,555.	
43b	<u>OTHER PROFESSIONAL FEES</u>	6,950.			6,950.
43c	<u>MISCELLANEOUS</u>	13,629.	13,629.		
43d	<u>REPAIRS AND MAINTENANCE</u>	37,755.	24,415.	8,565.	4,775.
43e	-----				
43f	-----				
43g	-----				
44	Total functional expenses. Add lines 22a through 43g (Organizations completing columns (B)-(D), carry these totals to lines 13-15).	3,470,270.	2,349,127.	737,949.	383,194.

Joint Costs. Check if you are following SOP 98-2.

Are any joint costs from a combined educational campaign and fundraising solicitation reported in (B) Program services? Yes No
 If "Yes," enter (i) the aggregate amount of these joint costs \$ _____, (ii) the amount allocated to Program services \$ _____,
 (iii) the amount allocated to Management and general \$ _____, and (iv) the amount allocated to Fundraising \$ _____

Part III Statement of Program Service Accomplishments (See the instructions)

Form 990 is available for public inspection and, for some people, serves as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and fully describes, in Part III, the organization's programs and accomplishments.

What is the organization's primary exempt purpose? SEE STATEMENT 5	Program Service Expenses
All organizations must describe their exempt purpose achievements in a clear and concise manner. State the number of clients served, publications issued, etc. Discuss achievements that are not measurable (Section 501(c)(3) and (4) organizations and 4947(a)(1) nonexempt charitable trusts must also enter the amount of grants and allocations to others.)	(Required for 501(c)(3) and (4) orgs, and 4947(a)(1) trusts, but optional for others.)
a <u>LITIGATION, LEGAL PUBLIC POLICY ANALYSIS, CLINICAL, LEGAL INTERN PROGRAM, BRIEFS AND RESEARCH DOCUMENTS, PUBLIC LEGAL ISSUES, MONOGRAPH SERIES, EDUCATIONAL LEGAL STUDIES, SEVEN DIFFERENT PUBLICATION FORMATS, MEDIA BRIEFINGS AND WEB SEMINARS.</u> (Grants and allocations \$ _____) If this amount includes foreign grants, check here <input type="checkbox"/>	1,872,234.
b <u>EDUCATIONAL MATERIAL DISTRIBUTED THROUGHOUT THE UNITED STATES AT NO CHARGE TO THE GENERAL PUBLIC. THESE MATERIALS DISCUSS BROAD ISSUES OF INTEREST TO ALL AMERICANS</u> (Grants and allocations \$ _____) If this amount includes foreign grants, check here <input type="checkbox"/>	476,893.
c _____ (Grants and allocations \$ _____) If this amount includes foreign grants, check here <input type="checkbox"/>	
d _____ (Grants and allocations \$ _____) If this amount includes foreign grants, check here <input type="checkbox"/>	
e Other program services (attach schedule) (Grants and allocations \$ _____) If this amount includes foreign grants, check here <input type="checkbox"/>	
f Total of Program Service Expenses (should equal line 44, column (B), Program services)	2,349,127.

Part IV Balance Sheets (See the instructions.)

Note: Where required, attached schedules and amounts within the description column should be for end-of-year amounts only

		(A) Beginning of year		(B) End of year
Assets	45 Cash - non-interest-bearing	712,360.	45	738,984.
	46 Savings and temporary cash investments	12,289,956.	46	13,620,893.
	47a Accounts receivable	47a		
	b Less: allowance for doubtful accounts	47b	47c	
	48a Pledges receivable	48a		
	b Less allowance for doubtful accounts	48b	48c	
	49 Grants receivable		49	
	50a Receivables from current and former officers, directors, trustees, and key employees (attach schedule)		50a	
	b Receivables from other disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B) (attach schedule)		50b	
	51a Other notes and loans receivable (attach schedule)	51a		
	b Less allowance for doubtful accounts	51b	51c	
	52 Inventories for sale or use		52	
	53 Prepaid expenses and deferred charges	16,940.	53	6,741.
	54a Investments - publicly-traded securities STMT 6. <input type="checkbox"/> Cost <input checked="" type="checkbox"/> FMV	2,490,132.	54a	2,777,737.
	b Investments - other securities (attach schedule) <input type="checkbox"/> Cost <input type="checkbox"/> FMV		54b	
	55a Investments - land, buildings, and equipment basis	55a		
	b Less accumulated depreciation (attach schedule)	55b	55c	
	56 Investments - other (attach schedule)		56	
	57a Land, buildings, and equipment basis	57a 4,125,588.		
	b Less: accumulated depreciation (attach schedule)	57b 1,592,684.	2,510,815.	57c 2,532,904.
58 Other assets, including program-related investments (describe STMT 7)	307,823.	58	399,807.	
59 Total assets (must equal line 74) Add lines 45 through 58	18,328,026.	59	20,077,066.	
Liabilities	60 Accounts payable and accrued expenses	28,319.	60	87,812.
	61 Grants payable		61	
	62 Deferred revenue		62	
	63 Loans from officers, directors, trustees, and key employees (attach schedule)		63	
	64a Tax-exempt bond liabilities (attach schedule)		64a	
	b Mortgages and other notes payable (attach schedule)		64b	
	65 Other liabilities (describe STMT 8)	1,237,507.	65	1,328,940.
	66 Total liabilities. Add lines 60 through 65	1,265,826.	66	1,416,752.
Net Assets or Fund Balances	Organizations that follow SFAS 117, check here <input checked="" type="checkbox"/> and complete lines 67 through 69 and lines 73 and 74.			
	67 Unrestricted	16,980,131.	67	18,578,245.
	68 Temporarily restricted		68	
	69 Permanently restricted	82,069.	69	82,069.
	Organizations that do not follow SFAS 117, check here <input type="checkbox"/> and complete lines 70 through 74			
	70 Capital stock, trust principal, or current funds		70	
	71 Paid-in or capital surplus, or land, building, and equipment fund		71	
	72 Retained earnings, endowment, accumulated income, or other funds		72	
	73 Total net assets or fund balances (add lines 67 through 69 or lines 70 through 72. (Column (A) must equal line 19 and column (B) must equal line 21)	17,062,200.	73	18,660,314.
	74 Total liabilities and net assets/fund balances. Add lines 66 and 73	18,328,026.	74	20,077,066.

Part IV-A Reconciliation of Revenue per Audited Financial Statements With Revenue per Return (See the instructions.)

a	Total revenue, gains, and other support per audited financial statements		a	5,068,384.
b	Amounts included on line a but not on Part I, line 12:			
1	Net unrealized gains on investments	b1	212,209.	
2	Donated services and use of facilities	b2		
3	Recoveries of prior year grants	b3		
4	Other (specify): _____	b4		
	Add lines b1 through b4	b	212,209.	
c	Subtract line b from line a	c	4,856,175.	
d	Amounts included on Part I, line 12, but not on line a:			
1	Investment expenses not included on Part I, line 6b	d1		
2	Other (specify): _____	d2		
	Add lines d1 and d2	d		
e	Total revenue (Part I, line 12). Add lines c and d	e	4,856,175.	

Part IV-B Reconciliation of Expenses per Audited Financial Statements With Expenses per Return

a	Total expenses and losses per audited financial statements		a	3,470,270.
b	Amounts included on line a but not on Part I, line 17:			
1	Donated services and use of facilities	b1		
2	Prior year adjustments reported on Part I, line 20	b2		
3	Losses reported on Part I, line 20	b3		
4	Other (specify): _____	b4		
	Add lines b1 through b4	b		
c	Subtract line b from line a	c	3,470,270.	
d	Amounts included on Part I, line 17, but not on line a:			
1	Investment expenses not included on Part I, line 6b	d1		
2	Other (specify): _____	d2		
	Add lines d1 and d2	d		
e	Total expenses (Part I, line 17). Add lines c and d	e	3,470,270.	

Part V-A Current Officers, Directors, Trustees, and Key Employees (List each person who was an officer, director, trustee, or key employee at any time during the year even if they were not compensated.) (See the instructions.)

(A) Name and address	(B) Title and average hours per week devoted to position	(C) Compensation (If not paid, enter -0-)	(D) Contributions to employee benefit plans & deferred compensation plans	(E) Expense account and other allowances
<u>SEE STATEMENT 9</u>				

Part V-A Current Officers, Directors, Trustees, and Key Employees (continued)

- 75a Enter the total number of officers, directors, and trustees permitted to vote on organization business at board meetings 3
b Are any officers, directors, trustees, or key employees listed in Form 990, Part V-A, or highest compensated employees listed in Schedule A, Part I, or highest compensated professional and other independent contractors listed in Schedule A, Part II-A or II-B, related to each other through family or business relationships? If "Yes," attach a statement that identifies the individuals and explains the relationship(s)
c Do any officers, directors, trustees, or key employees listed in Form 990, Part V-A, or highest compensated employees listed in Schedule A, Part I, or highest compensated professional and other independent contractors listed in Schedule A, Part II-A or II-B, receive compensation from any other organizations, whether tax exempt or taxable, that are related to the organization? See the instructions for the definition of "related organization."
d Does the organization have a written conflict of interest policy?

Table with 3 columns: Question, Yes, No. Contains checkboxes for 75a, 75b, 75c, 75d.

Part V-B Former Officers, Directors, Trustees, and Key Employees That Received Compensation or Other Benefits (If any former officer, director, trustee, or key employee received compensation or other benefits (described below) during the year, list that person below and enter the amount of compensation or other benefits in the appropriate column See the instructions.)

Table with 5 columns: (A) Name and address, (B) Loans and Advances, (C) Compensation (if not paid, enter -0-), (D) Contributions to employee benefit plans & deferred compensation plans, (E) Expense account and other allowances.

Part VI Other Information (See the instructions.)

- 76 Did the organization make a change in its activities or methods of conducting activities? If "Yes," attach a detailed statement of each change
77 Were any changes made in the organizing or governing documents but not reported to the IRS? If "Yes," attach a conformed copy of the changes.
78a Did the organization have unrelated business gross income of \$1,000 or more during the year covered by this return?
b If "Yes," has it filed a tax return on Form 990-T for this year?
79 Was there a liquidation, dissolution, termination, or substantial contraction during the year? If "Yes," attach a statement
80a Is the organization related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc., to any other exempt or nonexempt organization?
b If "Yes," enter the name of the organization STMT 10 and check whether it is [X] exempt or [] nonexempt
81a Enter direct and indirect political expenditures (See line 81 instructions)
b Did the organization file Form 1120-POL for this year?

Table with 3 columns: Question, Yes, No. Contains checkboxes for 76, 77, 78a, 78b, 79, 80a, 81a, 81b.

Part VI Other Information (continued)

Table with columns for question number, question text, and Yes/No columns. Rows include 82a, 83a, 84a, 85, 86, 87, 88b, 89a, 89b, 89e, 89f, 89g.

90a List the states with which a copy of this return is filed DC, FL, MN, NJ, NY, VA,
b Number of employees employed in the pay period that includes March 12, 2006 (See instructions) 14
91a The books are in care of CONSTANCE C. LARCHER Telephone no (202) 588-0302
Located at 2009 MASSACHUSETTS AVE., N.W. WASHINGTON, DC ZIP + 4 20036

Table with columns for question number, question text, and Yes/No columns. Row 91b: At any time during the calendar year, did the organization have an interest in or a signature or other authority over a financial account in a foreign country...

Part VI Other Information (continued)

Yes No

c At any time during the calendar year, did the organization maintain an office outside of the United States? 91c X

If "Yes," enter the name of the foreign country

92 Section 4947(a)(1) nonexempt charitable trusts filing Form 990 in lieu of Form 1041 - Check here and enter the amount of tax-exempt interest received or accrued during the tax year 92 NONE

Part VII Analysis of Income-Producing Activities (See the instructions.)

Note: Enter gross amounts unless otherwise indicated

Table with 5 main columns: (A) Business code, (B) Amount, (C) Exclusion code, (D) Amount, (E) Related or exempt function income. Rows include 93 Program service revenue, 94 Membership dues and assessments, 95 Interest on savings and temporary cash investments, 96 Dividends and interest from securities, 97 Net rental income or (loss) from real estate, 98 Net rental income or (loss) from personal property, 99 Other investment income, 100 Gain or (loss) from sales of assets other than inventory, 101 Net income or (loss) from special events, 102 Gross profit or (loss) from sales of inventory, 103 Other revenue, 104 Subtotal, 105 Total.

Note: Line 105 plus line 1e, Part I, should equal the amount on line 12, Part I

Part VIII Relationship of Activities to the Accomplishment of Exempt Purposes (See the instructions.)

Table with 2 columns: Line No., Explain how each activity for which income is reported in column (E) of Part VII contributed importantly to the accomplishment of the organization's exempt purposes (other than by providing funds for such purposes)

Part IX Information Regarding Taxable Subsidiaries and Disregarded Entities (See the instructions.)

Table with 5 columns: (A) Name, address, and EIN of corporation, partnership, or disregarded entity; (B) Percentage of ownership interest; (C) Nature of activities; (D) Total income; (E) End-of-year assets

Part X Information Regarding Transfers Associated with

(a) Did the organization, during the year, receive any funds, directly or indirectly, to (b) Did the organization, during the year, pay premiums, directly

Note: If "Yes" to (b), file Form 8870 and Form 4720 (see instructions)

Part XI Information Regarding Transfers To and From Controlled Entities. Complete only if the organization is a controlling organization as defined in section 512(b)(13).

106 Did the reporting organization make any transfers to a controlled entity as defined in section 512(b)(13) of the Code? If "Yes," complete the schedule below for each controlled entity

Yes	No
	X

	(A) Name, address, of each controlled entity	(B) Employer Identification Number	(C) Description of transfer	(D) Amount of transfer
a				
b				
c				
Totals				

107 Did the reporting organization receive any transfers from a controlled entity as defined in section 512(b)(13) of the Code? If "Yes," complete the schedule below for each controlled entity

Yes	No
	X

	(A) Name, address, of each controlled entity	(B) Employer Identification Number	(C) Description of transfer	(D) Amount of transfer
a				
b				
c				
Totals				

108 Did the organization have a binding written contract in effect on August 17, 2006, covering the interest, rents, royalties, and annuities described in question 107 above?

Yes	No
	X

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Please Sign Here

Signature of officer: Constance C. Larchel Date: 11-14-07
 Type or print name and title: CONSTANCE C. LARCHEL PRESIDENT + EXECUTIVE DIRECTOR

Paid Preparer's Use Only

Preparer's signature: [Signature] Date: 11/14/07 Check if self-employed:
 Firm's name (or yours if self-employed), address, and ZIP + 4: BOND BEEBE
4600 EAST-WEST HIGHWAY SUITE 900
BETHESDA, MD 20814-3423
 Preparer's SSN or PTIN (See Gen Inst X): 52-1044197
 Phone no: 301-272-6000

SCHEDULE A
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Organization Exempt Under Section 501(c)(
(Except Private Foundation) and Section 501(e), 501(f), 501(k), 501(n),
or 4947(a)(4)-Nonexempt Charitable-Trust

Supplementary Information - (See separate instructions.)
▶ **MUST be completed by the above organizations and attached to their Form 990 or 990-EZ**

OMB No 1545-0047

2006

Name of the organization: **WASHINGTON LEGAL FOUNDATION**
Employer identification number: **52-1071570**

Part I Compensation of the Five Highest Paid Employees Other Than Officers, Directors, and Trustees
(See page 2 of the instructions. List each one. If there are none, enter "None.")

(a) Name and address of each employee paid more than \$50,000	(b) Title and average hours per week devoted to position	(c) Compensation	(d) Contributions to employee benefit plans & deferred compensation	(e) Expense account and other allowances
<u>BINDU BALAN</u> 2009 MASSACHUSETTS AVE., N.W.	DIRECTOR OF ADMIN 45.00	57,917.	3,339.*	NONE
<u>PAUL D. KAMENAR</u> 2009 MASSACHUSETTS AVE., N.W.	SENIOR EXEC. COUNSEL 45.00	135,000.	119,956.*	NONE
<u>GLENN G. LAMMI</u> 2009 MASSACHUSETTS AVE., N.W.	CHIEF COUNS./LEGAL 45.00	143,000.	8,065.*	NONE
<u>RICHARD A. SAMP</u> 2009 MASSACHUSETTS AVE., N.W.	CHIEF COUNSEL 45.00	153,333.	16,056.*	NONE
Total number of other employees paid over \$50,000 . . ▶		NONE		

Part II-A Compensation of the Five Highest Paid Independent Contractors for Professional Services
(See page 2 of the instructions. List each one (whether individuals or firms). If there are none, enter "None.")

(a) Name and address of each independent contractor paid more than \$50,000	(b) Type of service	(c) Compensation
<u>BOND BEEBE, P.C.</u> BETHESDA, MD 20814-3423	ACCOUNTING	81,118.
Total number of others receiving over \$50,000 for professional services ▶		NONE

Part II-B Compensation of the Five Highest Paid Independent Contractors for Other Services
(List each contractor who performed services other than professional services, whether individuals or firms. If there are none, enter "None." See page 2 of the instructions.)

(a) Name and address of each independent contractor paid more than \$50,000	(b) Type of service	(c) Compensation
<u>NONE</u>		
Total number of other contractors receiving over \$50,000 for other services ▶		NONE

For Paperwork Reduction Act Notice, see the Instructions for Form 990 and Form 990-EZ. Schedule A (Form 990 or 990-EZ) 2006

*These figures are not actual contributions made, but only actuarial projections for retirement plans based upon retirement age.

Part III Statements About Activities (See page 2 of the instructions.)

Table with columns for question number, description, Yes, and No. Includes questions 1, 2, 2a-e, 3a-d, 4a-c, 4d-f, and 4g regarding lobbying activities, compensation, and donor advised funds.

Part IV Reason for Non-Private Foundation Status (See pages 4 through 7 of the instructions.)

I certify that the organization is not a private foundation because it is (Please check only **ONE** applicable box.)

- 5 A church, convention of churches, or association of churches Section 170(b)(1)(A)(i)
- 6 A school Section 170(b)(1)(A)(ii) (Also complete Part V)
- 7 A hospital or a cooperative hospital service organization Section 170(b)(1)(A)(iii).
- 8 A federal, state, or local government or governmental unit Section 170(b)(1)(A)(v)
- 9 A medical research organization operated in conjunction with a hospital Section 170(b)(1)(A)(iii) Enter the hospital's name, city, and state ▶
- 10 An organization operated for the benefit of a college or university owned or operated by a governmental unit Section 170(b)(1)(A)(iv) (Also complete the **Support Schedule** in Part IV-A)
- 11a An organization that normally receives a substantial part of its support from a governmental unit or from the general public Section 170(b)(1)(A)(vi) (Also complete the **Support Schedule** in Part IV-A)
- 11b A community trust Section 170(b)(1)(A)(vi) (Also complete the **Support Schedule** in Part IV-A)
- 12 An organization that normally receives (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its charitable, etc , functions - subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the by the organization after June 30, 1975 See section 509(a)(2) (Also complete the **Support Schedule** in Part IV-A)
- 13 An organization that is not controlled by any disqualified persons (other than foundation managers) and otherwise meets the requirements of section 509(a)(3) Check the box that describes the type of supporting organization
 - Type I
 - Type II
 - Type III - Functionally Integrated
 - Type III - Other

Provide the following information about the supported organizations. (See page 7 of the instructions)

(a) Name(s) of supported organization(s)	(b) Employer identification number (EIN)	(c) Type of organization (described in lines 5 through 12 above or IRC section)	(d) Is the supported organization listed in the supporting organization's governing documents?		(e) Amount of support
			Yes	No	
Total					▶

- 14 An organization organized and operated to test for public safety Section 509(a)(4) (See page 7 of the instructions)

Part IV-A Support Schedules Complete only if you checked a box on line 10, 11, or 12 Use cash method of accounting.

Note: You may use the worksheet in the instructions for converting from the accrual to the cash method of accounting.

Table with columns: Calendar year (or fiscal year beginning in), (a) 2005, (b) 2004, (c) 2003, (d) 2002, (e) Total. Rows include: 15 Gifts, grants, and contributions received; 16 Membership fees received; 17 Gross receipts from admissions, merchandise sold or services performed; 18 Gross income from interest, dividends, amounts received from payments on securities loans; 19 Net income from unrelated business activities; 20 Tax revenues levied for the organization's benefit; 21 The value of services or facilities furnished to the organization by a governmental unit; 22 Other income; 23 Total of lines 15 through 22; 24 Line 23 minus line 17; 25 Enter 1% of line 23; 26 Organizations described on lines 10 or 11; 27 Organizations described on line 12.

Part V Private School Questionnaire (See page 9 of the instructions.)

NOT APPLICABLE

(To be completed ONLY by schools that checked the box on line 6 in Part IV)

	Yes	No
29 Does the organization have a racially nondiscriminatory policy toward students by statement in its charter, bylaws, other governing instrument, or in a resolution of its governing body?	29	
30 Does the organization include a statement of its racially nondiscriminatory policy toward students in all its brochures, catalogues, and other written communications with the public dealing with student admissions, programs, and scholarships?	30	
31 Has the organization publicized its racially nondiscriminatory policy through newspaper or broadcast media during the period of solicitation for students, or during the registration period if it has no solicitation program, in a way that makes the policy known to all parts of the general community it serves? If "Yes," please describe, if "No," please explain (If you need more space, attach a separate statement)	31	

32 Does the organization maintain the following		
a Records indicating the racial composition of the student body, faculty, and administrative staff?	32a	
b Records documenting that scholarships and other financial assistance are awarded on a racially nondiscriminatory basis?	32b	
c Copies of all catalogues, brochures, announcements, and other written communications to the public dealing with student admissions, programs, and scholarships?	32c	
d Copies of all material used by the organization or on its behalf to solicit contributions?	32d	
If you answered "No" to any of the above, please explain. (If you need more space, attach a separate statement)		

33 Does the organization discriminate by race in any way with respect to		
a Students' rights or privileges?	33a	
b Admissions policies?	33b	
c Employment of faculty or administrative staff?	33c	
d Scholarships or other financial assistance?	33d	
e Educational policies?	33e	
f Use of facilities?	33f	
g Athletic programs?	33g	
h Other extracurricular activities?	33h	
If you answered "Yes" to any of the above, please explain (If you need more space, attach a separate statement.)		

34 a Does the organization receive any financial aid or assistance from a governmental agency?	34a	
b Has the organization's right to such aid ever been revoked or suspended? If you answered "Yes" to either 34a or b, please explain using an attached statement.	34b	
35 Does the organization certify that it has complied with the applicable requirements of sections 4 01 through 4 05 of Rev. Proc. 75-50, 1975-2 C B 587, covering racial nondiscrimination? If "No," attach an explanation	35	

Part VI-A Lobbying Expenditures by Electing Public Charities (See page 10 of the instructions.)

(To be completed ONLY by an eligible organization that filed Form 5768) NOT APPLICABLE

Check a if the organization belongs to an affiliated group Check b if you checked "a" and "limited control" provisions apply.

Limits on Lobbying Expenditures

(The term "expenditures" means amounts paid or incurred)

Table with columns (a) Affiliated group totals and (b) To be completed for all electing organizations. Rows 36-44 detailing lobbying expenditures and nontaxable amounts.

Caution: If there is an amount on either line 43 or line 44, you must file Form 4720.

4-Year Averaging Period Under Section 501(h)

(Some organizations that made a section 501(h) election do not have to complete all of the five columns below.)

See the instructions for lines 45 through 50 on page 13 of the instructions)

Lobbying Expenditures During 4-Year Averaging Period

Table with columns (a) 2006, (b) 2005, (c) 2004, (d) 2003, and (e) Total. Rows 45-50 detailing lobbying nontaxable amounts, ceilings, and expenditures.

Part VI-B Lobbying Activity by Nonelecting Public Charities

NOT APPLICABLE

(For reporting only by organizations that did not complete Part VI-A) (See page 13 of the instructions.)

During the year, did the organization attempt to influence national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of

- a Volunteers
b Paid staff or management (Include compensation in expenses reported on lines c through h)
c Media advertisements
d Mailings to members, legislators, or the public
e Publications, or published or broadcast statements
f Grants to other organizations for lobbying purposes
g Direct contact with legislators, their staffs, government officials, or a legislative body
h Rallies, demonstrations, seminars, conventions, speeches, lectures, or any other means
i Total lobbying expenditures (Add lines c through h)

Table with columns Yes, No, and Amount for each activity listed in the previous block.

If "Yes" to any of the above, also attach a statement giving a detailed description of the lobbying activities

Part VII Information Regarding Transfers To and Transactions and Relationships With Charitable Exempt Organizations (See page 13 of the instructions.)

51 Did the reporting organization directly or indirectly engage in any of the following with any other organization described in section 501(c) of the Code (other than section 501(c)(3) organizations) or in section 527, relating to political organizations?

	Yes	No
a Transfers from the reporting organization to a noncharitable exempt organization of:		
(i) Cash		X
(ii) Other assets		X
b Other transactions:		
(i) Sales or exchanges of assets with a noncharitable exempt organization		X
(ii) Purchases of assets from a noncharitable exempt organization		X
(iii) Rental of facilities, equipment, or other assets		X
(iv) Reimbursement arrangements		X
(v) Loans or loan guarantees		X
(vi) Performance of services or membership or fundraising solicitations		X
c Sharing of facilities, equipment, mailing lists, other assets, or paid employees	X	

d If the answer to any of the above is "Yes," complete the following schedule. Column (b) should always show the fair market value of the goods, other assets, or services given by the reporting organization. If the organization received less than fair market value in any transaction or sharing arrangement, show in column (d) the value of the goods, other assets, or services received.

(a) Line no	(b) Amount involved	(c) Name of noncharitable exempt organization	(d) Description of transfers, transactions, and sharing arrangements
51C		BUSINESS CIVIL LIBERTIES, INC. (501(C)(4))	ONE FILE DRAWER OF ADMINISTRATIVE FILES LOCATED IN THE ADMINISTRATIVE OFFICE

52a Is the organization directly or indirectly affiliated with, or related to, one or more tax-exempt organizations described in section 501(c) of the Code (other than section 501(c)(3)) or in section 527? Yes No

b If "Yes," complete the following schedule

(a) Name of organization	(b) Type of organization	(c) Description of relationship
BUSINESS CIVIL LIBERTIES, INC. (501(C)(4))	ADVOCATE FOR BUSINESS CIVIL LIBERTIES	COMMON DIRECTORS

FEDERAL FOOTNOTES

=====

ATTACHMENT
FORM 990, PART I, LINE 1

A SCHEDULE OF CONTRIBUTIONS, NOT OPEN TO PUBLIC INSPECTION, IS
ATTACHED AS FORM 990, SCHEDULE B.

NO CONTRIBUTIONS WERE RAISED BY PROFESSIONAL FUNDRAISERS.

FEDERAL FOOTNOTES

=====

ATTACHMENT

FORM 990, PART I, LINE 8(A)

THE FOUNDATION SOLD AND REDEEMED SHARES AND UNITS OF PUBLICLY TRADED SECURITIES AND U.S. GOVERNMENT OBLIGATIONS. AS SPECIFIED IN THE INSTRUCTIONS TO FORM 990, THE GROSS PROCEEDS, COST BASIS AND NET LOSS ARE REPORTED AS LUMP-SUM FIGURES.

FORM 990, PART I - OTHER INCREASES IN FUND BALANCES

=====

DESCRIPTION

AMOUNT

NET UNREALIZED GAINS ON INVESTMENTS

212,209.

TOTAL

212,209.

=====

Washington Legal Foundation
EIN: 52-1071570
Year Ended December 31, 2006

Attachment
Form 990, Part II, Line 42
Form 990, Part IV, Line 57

	Balance at 12/31/05	Additions	Deletions	Balance at 12/31/06
Furniture	236,908			236,908
Equipment	471,251	17,272		488,523
Building and Land	3,321,003	79,154		3,400,157
Totals	4,029,162	96,426	0	4,125,588
Accum Depr - Furniture	233,962	39,524		273,486
Accum Depr - Equipment	306,617	22,778		329,395
Accum Depr - Building	977,768	12,033		989,801
	1,518,347	74,335	0	1,592,682
	<u>2,510,815</u>			<u>2,532,906</u>

FORM 990, PART III - ORGANIZATION'S PRIMARY EXEMPT PURPOSE

=====

THE FOUNDATION SERVES THE PUBLIC INTEREST THROUGH LITIGATION AND REPRESENTATION, LEGAL PUBLIC POLICY ANALYSIS, INTERN PROGRAMS, RESEARCH AND BRIEFS, MONOGRAPHS, EDUCATIONAL MATERIALS, MEDIA BRIEFINGS AND WEB SEMINARS.

FORM 990, PART IV - INVESTMENTS - PUBLICLY TRADED SECURITIES

=====

DESCRIPTION -----	ENDING BOOK VALUE -----
PUBLICLY TRADED SECURITIES	
CORPORATE BONDS	298,993.
CORPORATE STOCK (<5% OWNER)	1,448,540.
FOREIGN BONDS	31,185.
MUTUAL FUNDS	599,019.
U.S. GOVERNMENT OBLIGATIONS	400,000.

TOTALS	2,777,737.
	=====

FORM 990, PART IV - OTHER ASSETS

=====

DESCRIPTION -----	ENDING BOOK VALUE -----
ACCRUED INTEREST RECEIVABLE	106,118.
CASH SURRENDER VALUE OF LIFE INSURANCE	293,689.
TOTALS	----- 399,807. =====

FORM 990, PART IV - OTHER LIABILITIES

=====

DESCRIPTION

ENDING
BOOK VALUE

ACCRUED EMPLOYEE BENEFITS

410,860.

ACCRUED PENSION LIABILITY

918,080.

TOTALS

1,328,940.
=====

FORM 990, PART V-A - CURRENT OFFICERS, DIRECTORS, AND TRUSTEES

=====

NAME AND ADDRESS	TITLE AND TIME DEVOTED TO POSITION	COMPENSATION	CONTRIBUTIONS TO EMPLOYEE BENEFIT PLANS	EXPENSE ACCT AND OTHER ALLOWANCES
------------------	---------------------------------------	--------------	---	---

SEE ATTACHED SCHEDULE

FORM 990, PART VI - NAMES OF RELATED ORGANIZATIONS

=====

RELATED ORGANIZATION NAME: AMERICAN LEGAL FOUNDATION

EXEMPT: X NONEXEMPT:

RELATED ORGANIZATION NAME: BUSINESS CIVIL LIBERTIES

EXEMPT: X NONEXEMPT:

RELATED ORGANIZATION NAME: UNITED STATES LEGAL FOUNDATION

EXEMPT: X NONEXEMPT:

SCHEDULE A, PART III - EXPLANATION FOR LINE 2D

=====

SEE FORM 990, PART V. THE FOUNDATION REIMBURSED FULLY-ACCOUNTED EXPENSES FOR ORDINARY AND NECESSARY OPERATIONAL PURPOSES. THE FOUNDATION DID NOT PROVIDE A NONACCOUNTABLE EXPENSE ACCOUNT OR ALLOWANCE TO ANY DISQUALIFIED PERSON.

SCHEDULE A, PART IV-A - OTHER INCOME

=====

DESCRIPTION -----	2005 ----	2004 ----	2003 ----	2002 ----	TOTAL -----
OTHER INCOME			5,989.	8,056.	14,045.
TOTALS			5,989.	8,056.	14,045.
	=====	=====	=====	=====	=====

FEDERAL FOOTNOTES

=====

ATTACHMENT
FORM 990, PART VI, LINE 82

THE FOUNDATION RECEIVED DONATED SERVICES VALUED AT HUNDREDS OF
THOUSANDS OF DOLLARS.

FEDERAL FOOTNOTES

=====

ATTACHMENT
FORM 990, PART V-A, LINE 75B

TWO OF THE DIRECTORS LISTED UNDER PART V, DANIEL J. POPEO AND JOHN
POPEO ARE RELATED.

WASHINGTON LEGAL FOUNDATION
52-1071570

ATTACHMENT
FORM 990, PART V

Name and address	Title and average hours per week devoted to position	Compensation	Contributions to employee benefit plans	Expense account and other allowances
DANIEL J. POPEO 2009 MASSACHUSETTS AVENUE, NW WASHINTON, DC 20036	CHAIRMAN/ DIRECTOR 45 HOURS	332,698	148,922 *	NONE
CONSTANCE C. LARCHER 2009 MASSACHUSETTS AVENUE, NW WASHINTON, DC 20036	PRES.-TREAS. DIRECTOR 45 HOURS	291,365	181,531 *	NONE
JOHN POPEO 2009 MASSACHUSETTS AVENUE, NW WASHINTON, DC 20036	DIRECTOR 3 HOURS	NONE	NONE	NONE

* THESE FIGURES ARE NOT ACTUAL CONTRIBUTIONS MADE, BUT ONLY ACTUARIAL PROJECTIONS FOR RETIREMENT PLANS BASED UPON RETIREMENT AGE.

NO COMPENSATION IS PAID TO ANY DIRECTOR FOR THEIR SERVICES AS A DIRECTOR.

January 17, 2007

YEARLY ACTIVITIES REPORT TO THE WASHINGTON LEGAL FOUNDATION BOARD OF TRUSTEES

The ideals upon which America was founded - individual freedom, limited government, free market economy, and a strong national security and defense - are the same principles that the Washington Legal Foundation (WLF) defends in the public interest arena. WLF's overriding mission is to defend and promote freedom and justice. WLF engaged in the following activities in support of this mission during 2006.

COURT PROCEEDINGS

NATIONAL SECURITY -- INTERCEPTING ELECTRONIC COMMUNICATIONS. *ACLU v. National Security Agency; Center for Constitutional Rights v. Bush.* On October 24, 2006, WLF filed its appellate brief in this important counter-terrorism case. On August 21, 2006, Judge Anna Diggs Taylor of the United States District Court for the Eastern District of Michigan agreed with the ACLU and struck down the National Security Agency's (NSA) electronic Terrorist Surveillance Program (TSP). Under TSP, certain international electronic communications where one of the parties to the communication is a suspected al Qaeda agent or affiliate could be intercepted without a court order. In doing so, Judge Taylor became the first and only federal judge to order a president to stop a wartime foreign intelligence gathering operation. The ruling, however, has been temporarily stayed while the case is heard in the court of appeals. On May 30, 2006, WLF filed a brief before Judge Taylor opposing the ACLU suit. On June 6, 2006, WLF filed a similar brief in New York federal court in a related case filed by the Center for Constitutional Rights (CCR). In *ACLU v. NSA* and *CCR v. Bush*, the activist groups claim that the recently revealed NSA surveillance program where international calls and emails are monitored violates the Foreign Intelligence Surveillance Act of 1978 (FISA), which requires approval by a special FISA court confirming that there is probable cause to believe that the person targeted for electronic surveillance is an agent of a foreign power. WLF argued forcefully in its brief that it is FISA that violates the separation of powers to the extent it impairs the President's ability to carry out his constitutional responsibilities to defend the country from further attack and to collect foreign intelligence. The Justice Department took the position that the courts cannot reach the merits of the case, asserting military and state secrets privilege, and requested that these and similar cases be transferred to a single federal court. WLF's brief was drafted

with the *pro bono* help of Bryan Cunningham of Morgan & Cunningham in Denver, CO.

Status: Loss in district court. Appellate argument scheduled for January 31, 2007.

NATIONAL SECURITY -- DETERRING TERRORIST ATTACKS. *MacWade v. Kelly.* On August 11, 2006, WLF scored a major victory when the U.S. Court of Appeals for the Second Circuit upheld a lower court ruling that rejected a constitutional challenge by the New York Civil Liberties Union (NYCLU) to New York City's subway bag inspection program designed to detect and deter terrorist attacks. On April 4, 2006, WLF filed its brief in the court of appeals to preserve its victory in the district court on behalf of its clients, U.S. Representative Peter T. King of New York and Chairman of the House Committee on Homeland Security and U.S. Representative Ginny Brown-Waite of Florida and a member of the committee; Families of September 11, Inc. and the Allied Educational Foundation; New York State Senator Martin J. Golden; New York Assemblymen Vincent M. Ignizio and Matthew Mirones; New York City Council Member James S. Oddo; and Stephen M. Flatow of New Jersey, whose daughter, Alisa Flatow, was killed by the Palestinian Islamic Jihad in a bus bombing while studying in Israel. WLF's district court victory came on December 2, 2005, when U.S. District Judge Richard Berman in Manhattan issued a 41-page ruling upholding the constitutionality of New York City's subway bag inspection implemented shortly after the London terrorist subway bombings in the summer of 2005. In the district court, WLF filed two briefs, the second one following the two-day trial that began on October 31, 2005, at the specific request of the presiding judge and over the objections of the NYCLU. WLF's brief was drafted with the *pro bono* assistance of Andrew T. Frankel, partner in the New York office of Simpson Thacher & Bartlett LLP, and associates Bryce L. Friedman and Seth M. Kruglak.

Status: Victory.

NATIONAL SECURITY -- DETERRING TERRORIST ATTACKS. *Johnston v. Tampa Sports Authority.* On November 17, 2006, WLF filed a brief in the U.S. Court of Appeals for the Eleventh Circuit, urging it to reject a challenge to an NFL policy that entails brief searches of all patrons entering NFL stadiums. WLF argued that the searches are "reasonable" within the meaning of the Fourth Amendment and in any event are not subject to the Fourth Amendment because they are being carried out at the direction of private entities. The case is on appeal from a district court injunction against such searches at home games being played by the Tampa Bay Buccaneers, an NFL team. Pursuant to a league-wide policy, the Buccaneers required that all patrons entering their stadium submit to a brief, non-intrusive pat-down search to determine whether they are carrying explosives. WLF argued that the searches are minimally intrusive and are more than justified by the very real possibility that terrorist groups will attempt to kill large numbers of civilians by planting a bomb in a football stadium.

Status: Awaiting oral argument.

NATIONAL SECURITY -- SUPPORT FOR TERRORIST GROUPS. *Humanitarian Law Project v. Gonzales.* On April 13, 2006, WLF filed a brief in the U.S. Court of Appeals for the Ninth Circuit, urging it to uphold a portion of the USA PATRIOT Act that makes it a crime to provide "material support" to any group that has been designated by the Attorney General as a "foreign terrorist organization." WLF argued that the statute is not impermissibly vague and does not violate the First Amendment rights of those who wish to support humanitarian work conducted by terrorist groups. WLF argued that the First Amendment does not prevent Congress from barring actions taken to aid terrorist groups simply because the actions may have an expressive component. WLF argued that material support provided to a terrorist organization - even material support intended to further the organization's humanitarian activities - can be prohibited because material support used to provide humanitarian activities frees up other resources and thereby permits the organization to divert those other resources to terrorism. WLF filed its brief on behalf of itself and the Allied Educational Foundation.

Status: Awaiting oral argument.

ILLEGAL ALIENS -- DRIVER'S LICENSES. *Cubas v. Martinez.* On July 6, 2006, the Appellate Division of the New York Supreme Court upheld new regulations adopted by the State of New York that make it extremely difficult for illegal aliens to obtain driver's licenses. The decision was a victory for WLF, which filed a brief urging the court to uphold the regulations. WLF argued that the restrictions are needed to ensure that terrorists and criminals do not obtain fake identification documents that can facilitate their activities. The Appellate Division agreed and held that those interests outweigh any interests that illegal aliens may have in obtaining driver's licenses. The appeals court overturned a trial court's preliminary injunction against the new regulations. Among other changes, the new Department of Motor Vehicles (DMV) regulations prohibit use of foreign-source documents (such as foreign passports) to establish identity, because their authenticity cannot easily be verified. The result is that illegal aliens rarely qualify to obtain new or renewed driver's licenses, because they rarely possess verifiable U.S.-source documents (*e.g.*, birth certificates or immigration papers) that establish their identity. The appeals court agreed with WLF's argument that DMV's authority to demand proof of "identity" includes the right to adopt any reasonable rule designed to ensure that the driver's license applicant is who he says he is. The regulations are not rendered invalid simply because they have the effect of preventing illegal aliens from obtaining licenses, the appeals court agreed. WLF filed its brief on behalf of itself and the Allied Educational Foundation.

Status: Victory.

CRIMINALIZATION OF FREE ENTERPRISE -- U.S. SENTENCING GUIDELINES. *Claiborne v. U.S.; Rita v. U.S.* On December 18, 2006, WLF filed a brief in the U.S. Supreme Court in a pair of related cases that will decide what weight the U.S. Sentencing Guidelines should be given by federal judges in determining the appropriate sentence in a particular criminal case. The outcome of the case will have significant impact on federal

sentencing practices that affect business owners and executives, particularly with respect to regulatory offenses where the current Guidelines call for excessive prison terms for minor infractions. In *Claiborne v. U.S.* and *Rita v. U.S.*, WLF argued that Congress intended that punishments should fit the crime and the offender, but that the Sentencing Guidelines do neither. For almost 20 years, the Guidelines dictated mandatory sentences that regularly called for severe prison sentences, some from three to nine years or even more, for minor regulatory infractions, including environmental offenses where no harm occurred. In early 2005, the Supreme Court in *Booker v. United States* struck down the mandatory feature of the Guidelines as unconstitutional under the Sixth Amendment right to jury trial. Since that decision, however, many courts of appeals have reversed sentences imposed by district court judges below the Guideline level as unreasonable. In doing so, they ruled that the Guidelines should be given a presumption of reasonableness and special weight. WLF's brief was filed on behalf of itself and the Allied Educational Foundation.

Status: Oral argument scheduled for February 20, 2007.

ENVIRONMENTAL REGULATION -- JURISDICTION OVER WETLANDS. *Rapanos v. United States*. On June 19, 2006, the Supreme Court ruled that the U.S. Army Corps of Engineers could not assert federal jurisdiction over certain wetlands that had only a tenuous hydrological connection to navigable waterways. However, because the decision was supported by only four justices, with a separate decision and rationale for reversal written by Justice Kennedy who provided the fifth vote, the ramifications of the decision will be litigated in future cases. On December 2, 2005, WLF filed a brief in the United States Supreme Court urging it to reject the federal government's claim that it has regulatory authority under the Clean Water Act over isolated "wetlands" located over 20 miles away from any navigable waterway. Federal regulators who have seemingly ignored the Court's ruling four years ago that Congress intended the Clean Water Act's jurisdiction to extend only over wetlands that are adjacent to waterways that are navigable, and not over isolated wetlands that are otherwise subject to local control. In *Rapanos v. United States*, the U.S. Army Corps of Engineers and prosecutors have spent the last decade relentlessly pursuing civil and criminal charges against John Rapanos, a small developer, for placing sand on his own property that the Corps deems to be federally regulated wetlands. The linchpin for the Corp's jurisdiction over the property was the fiction that the property was "adjacent" to a river over 20 miles away. WLF clients include the Allied Educational Foundation and two environmental scientists, Laurence A. Peterson and Edmond C. Packee, Jr., of Travis/Peterson Environmental Consulting, Inc., of Alaska. WLF's brief was drafted *pro bono* by Mark A. Perry, a partner with Gibson, Dunn & Crutcher, LLP, in Washington, D.C.

Status: Victory.

GLOBAL WARMING -- EPA RULEMAKING AUTHORITY. *Massachusetts v. EPA*. On November 29, 2006, the Supreme Court heard oral argument in this important global warming case. On October 24, 2006, WLF filed a brief in the Court seeking to uphold its

victory below in this important global warming case. On July 15, 2005, WLF's victory came when the United States Court of Appeals for the District of Columbia Circuit rejected an effort by several states and environmental groups to require that the Environmental Protection Agency (EPA) regulate carbon dioxide as a pollutant under the Clean Air Act. If the court had ruled in favor of the petitioners, the EPA would be required to regulate so-called "greenhouse gases" produced by automobiles, manufacturing facilities, and other sources of carbon dioxide that petitioners claim are causing global warming. Such a ruling would, in effect, implement the unratified Kyoto Treaty regulating greenhouse gases. In its brief, WLF argued that the issue of global climate change and its causes has been the most prominent energy and environmental issue of recent years. WLF referred the court to comments WLF filed in 1999 as part of the Working Group to Oppose Expanded EPA Authority urging the agency to reject the petition filed by the International Center for Technology Assessment (ICTA). WLF argued that Congress would certainly have been clear and explicit when it enacted the Clean Air Act if it wanted to give the EPA authority to initiate a massive regulatory program for greenhouse gases. Accordingly, under basic principles of statutory interpretation and administrative law, the EPA was not authorized by Congress to venture into this highly controversial area. WLF's brief was filed with the *pro bono* assistance of Peter Glaser of the Washington, D.C., law firm of Troutman Sanders, LLP.

Status: Awaiting decision.

FDA REFORM -- ACCESS TO LIFESAVING MEDICINES. *Abigail Alliance for Better Access to Developmental Drugs v. von Eschenbach*. On December 29, 2006, WLF filed a brief in the U.S. Court of Appeals for the District of Columbia Circuit (sitting *en banc*), urging it to affirm its earlier ruling in favor of WLF that granted terminally ill patients a constitutionally-based right of access to experimental drugs that have not yet been fully approved by the Food and Drug Administration (FDA). WLF argued that throughout American history the judiciary has recognized the right of individuals to engage in self-defense -- regardless whether the attacker is another person, an animal, or a disease. WLF argued that, based on that traditional self-defense right, the appeals court should recognize a constitutional right of terminally ill patients who lack effective treatment options to take experimental drugs, without interference from FDA. WLF argued that the decision to take such drugs should be left up to the patient, his or her doctor, and the drug's manufacturer. In a historic decision last May, a three-judge D.C. Circuit panel ruled in WLF's favor on the issue. The D.C. Circuit granted FDA's rehearing petition in November and called for a new round of briefs from the parties (beginning with WLF's December 29 brief). WLF will argue its case before the *en banc* court (that is, before all ten judges on the court) on March 1, 2007. WLF filed suit against FDA in 2003 on behalf of itself and the Abigail Alliance for Better Access to Developmental Drugs, a patients-rights group. WLF has received invaluable *pro bono* legal assistance from Scott Ballenger, a partner in the Washington office of Latham & Watkins.

Status: Oral argument scheduled for March 1, 2007.

IMMIGRATION -- VOTING INTEGRITY. *Gonzalez v. State of Arizona.* WLF continues to battle efforts by activists to strike down Proposition 200, an immigration-control initiative adopted in November 2004 by Arizona voters. On September 11, 2006, the U.S. District Court for the District of Arizona rejected a challenge to those portions of Prop 200 designed to prevent aliens from voting. The appeals court issued an injunction pending appeal, but the U.S. Supreme Court overturned that injunction on October 20, 2006 -- in time for the November elections. The district court and Supreme Court decisions were victories for WLF, which filed a brief urging denial of a preliminary injunction request. WLF argued that Arizona voters were well within their rights in adopting measures designed to prevent election fraud -- including a requirement that those seeking to register to vote must provide documentary proof of citizenship and a requirement that voters provide a picture ID when they come to the polls. The court agreed with WLF that these measures violated neither the U.S. Constitution nor the National Voting Rights Act of 1993 (also known as the "motor-voter" law), which requires all States to permit mail-in voter registration. WLF is representing Protect Arizona NOW (PAN); the group that spearheaded adoption of Prop 200. WLF also represented PAN in prior litigation challenging other portions of Prop 200 that seek to prevent illegal aliens from collecting welfare benefits. WLF prevailed in the prior litigation, and the welfare-related provisions are not at issue in the latest round of lawsuits.

Status: Victory. WLF to file new brief in appeals court in January 2007.

NATIONAL SECURITY -- DETENTION OF ENEMY COMBATANT. *Padilla v. Hanft.* On April 3, 2006, the U.S. Supreme Court declined to review a lower court decision upholding the federal government's detention of Jose Padilla, the "dirty bomber" accused of being an al Qaeda operative. The decision was a victory for WLF, which filed a brief (on behalf of itself and the Allied Educational Foundation) urging the Court not to hear the case. The Supreme Court neither declared the case moot nor vacated the lower court decision on mootness grounds, even though Padilla, a U.S. citizen, is no longer being held as an "enemy combatant" - Padilla was recently released from military custody and turned over to civilian authorities to face trial in connection with largely unrelated charges that he conspired to aid overseas terrorist organizations. As a result of the Supreme Court not taking any action to declare the case moot, the September 2005 appeals court decision in the government's favor remains standing and can serve as a precedent in future enemy combatant cases. WLF filed a total of four briefs in support of the government as Padilla's case wound its way through the federal courts over the past four years. On September 9, 2005, the U.S. Court of Appeals for the Fourth Circuit in Richmond upheld the federal government's detention of Padilla. As a result of decisions in this case, the courts have now clearly established that the government is entitled to detain without trial American citizens discovered fighting for enemy forces, just as it is entitled to detain any enemy soldier captured in time of war. The courts also agreed with WLF that the right to detain Padilla was not diminished simply because he was captured in Chicago rather than on some overseas battlefield. The government alleges that Padilla fought with al Qaeda/Taliban forces in Afghanistan against the United States.

Status: Victory.

LEGAL REFORM -- PUNITIVE DAMAGES. *Philip Morris USA v. Williams*. On October 31, 2006, the Supreme Court heard oral argument in this important punitive damages case. On July 28, 2006, WLF filed a brief with the Court urging it to reverse an Oregon Supreme Court decision that upheld an excessive \$79.5 million punitive damages award to a lifelong smoker who died of lung cancer after smoking for over 45 years. WLF argued that in light of the compensatory damage award of approximately \$800,000 and the jury's finding that the smoker was equally responsible for his medical injuries, the punitive damages award of approximately 100 times the amount of compensatory damages was grossly excessive and violated the company's due process rights. The outcome of the case will have a major impact on the assessment of punitive damages against other industries in future cases. WLF argued in its brief filed on behalf of itself and the Allied Education Foundation that under recent U.S. Supreme Court decisions, the jury should have been instructed to ignore alleged harms to other persons for the conduct of the defendant; otherwise, the case would effectively be transformed into a class action without any of the procedural protections afforded defendants in those cases.

Status: Awaiting decision.

SECURITIES CLASS ACTIONS -- PREEMPTION. *Merrill Lynch v. Dabit*. On March 21, 2006, the U.S. Supreme Court reversed a lower court's restrictive interpretation of the Securities Litigation Uniform Standards Act of 1998, or "SLUSA." In that statute, Congress acted to curb abusive class action claims in state court for securities fraud. The appeals court in this case read a restriction into the statute's preemption provision, holding that it allows suits to proceed in state court on behalf of persons who merely hold, rather than purchase or sell, securities. In its brief filed in the Supreme Court on November 14, 2005, WLF argued that SLUSA's language preempts "holder" claims as well as purchaser and seller claims. WLF noted that SLUSA was intended to protect the federal policy of encouraging efficient securities markets by preventing circumvention of Securities Litigation Reform Act of 1995. WLF's brief also argued that a broad reading of SLUSA is consistent with principles of federalism. WLF was represented in the case on a *pro bono* basis by Donald B. Verrilli, Jr., of the Washington, D.C. office of Jenner & Block LLP.

Status: Victory.

ANTITRUST -- INTELLECTUAL PROPERTY. *Illinois Tools Works, Inc. v. Independent Ink, Inc.* The U.S. Supreme Court issued a ruling on March 1, 2006, limiting antitrust actions against intellectual property owners by rejecting a presumption that the owner of a copyright or patent possesses market power under the antitrust laws. WLF filed a brief in the case on August 4, 2005, urging the Court to reject that presumption. In its brief, WLF argued that intellectual property has no inherent characteristics that justify shifting the burden of proof in antitrust cases onto the owners of that property. WLF noted that the Federal Circuit's rule would encourage frivolous nuisance suits by rendering it much easier for a suit to survive a motion to dismiss, even where the patent or copyright owner possesses no market power whatsoever. WLF also argued that the rule would encourage defendants in

patent infringement actions to bring antitrust counterclaims, thus bypassing the requirements of the patent misuse defense created by Congress. WLF's brief was drafted on a *pro bono* basis by William C. MacLeod, a member of Collier Shannon Scott specializing in antitrust, and by Samuel M. Collings, an associate at the firm.

Status: Victory.

ANTITRUST -- COMPETITIVE BIDDING. *Volvo Trucks North America v. Reeder-Simco GMC.* On January 10, 2006, the U.S. Supreme Court issued a decision rejecting a broad interpretation of the Robinson-Patman Act. This antitrust statute prohibits certain forms of price discrimination in commercial transactions (such as transactions between manufacturers and retail sellers). The Justices accepted WLF's position that a manufacturer is liable under the Act for alleged favoritism among dealers only if the dealers were in competition with one another. WLF filed its brief on the merits in the case on May 20, 2005, noting that the appeals court's interpretation of the Act would have banned pricing practices that are common and legitimate in competitive bidding situations. WLF also filed a brief in February 2005 urging the Supreme Court to review the case.

Status: Victory.

ANTITRUST -- JOINT VENTURES. *Texaco, Inc. v. Dagher.* The U.S. Supreme Court issued a decision on February 28, 2006, reversing an appeals court decision that expanded the reach of the price-fixing laws with respect to joint ventures. WLF had filed a brief on September 12, 2005, asking the Justices to reverse the appeals court decision. The litigation involves two joint ventures formed by Texaco and Shell Oil to take over the gasoline wholesaling and retailing operations of those companies in the United States. The "Texaco" and "Shell" names continue to exist as separate brands under the joint ventures. The court below, the U.S. Court of Appeals for the Ninth Circuit, ruled that the companies could be held liable for price-fixing because the joint ventures priced Texaco and Shell gasoline the same. The case was important to the business community because the Ninth Circuit's decision, by treating a bona fide joint venture as a cartel, created the potential for antitrust liability for joint ventures in a variety of contexts. WLF's brief was drafted on a *pro bono* basis by William J. Kolasky and Ali M. Stoeppelwerth of the Washington, D.C. office of Wilmer Cutler Hale and Dorr LLP and by Steven P. Lehotsky of the firm's Boston office. WLF previously filed a brief on January 13, 2005, urging the Court to hear the case.

Status: Victory.

LAND USE -- BALLOT INITIATIVE. *MacPherson v. Dep't of Admin. Svcs.* On February 21, 2006, the Oregon Supreme Court issued a decision upholding the legality of a ballot measure adopted by the voters for the protection of landowners' rights. The decision reversed a trial court ruling that found the ballot measure to be a violation of the Oregon Constitution. WLF had filed a brief in the state Supreme Court supporting the ballot measure on December 5, 2005. The case was a challenge to the constitutionality of Ballot Measure 37, an Oregon

ballot measure protecting landowners who suffer a loss in the value of their property on account of land use regulations. After the passage of the measure in 1994, a state trial court held it invalid under various provisions of the Oregon Constitution. In its brief, WLF argued that the trial court had erred in its ruling under the Equal Privileges and Immunities Clause of the Oregon Constitution; the state Supreme Court agreed. Dorothy S. Cofield of the Cofield Law Office in Lake Oswego, Oregon represented WLF as local counsel on a *pro bono* basis.

Status: Victory.

OIL AND GAS DEVELOPMENT -- ENVIRONMENTAL RESTRICTIONS. *Northern Alaska Environmental Center, et al. v. Norton.* On July 25, 2006, the U.S. Court of Appeals for the Ninth Circuit upheld a lower court decision that rejected a challenge by environmental groups to the preliminary plans by the Department of Interior to offer certain oil and gas leases in a particular area of Alaska. On July 11, 2005, WLF filed a brief in the U.S. Court of Appeals for the Ninth Circuit, urging the court to affirm a lower court ruling that upheld the Final Environmental Impact Statement (FEIS) for the oil and gas leasing program for the Northwest Planning Area of the National Petroleum Reserve in Alaska (NPR-A). Oral argument was held September 15, 2005. WLF argued that the FEIS was more than sufficient to satisfy environmental laws, including the Endangered Species Act (ESA). Environmental groups, including the Sierra Club, Audubon Society, and Center for Biological Diversity, are trying to stop oil leases from being issued. WLF argued that any oil and gas production, which is at least ten years away, would disturb less than 1,900 acres of the surface area of the Northwest Planning Area, or 0.02 percent of the 8.8 million acre oil reserve. Furthermore, significant measures would also be taken to mitigate any harm to wildlife and the environment.

Status: Victory.

TORT REFORM -- FIRST AMENDMENT. *Physicians Committee for Responsible Medicine v. General Mills.* On November 30, 2006, the U.S. District Court for the Eastern District of Virginia dismissed a lawsuit by animal rights activists who are seeking to stop advertisements being run by the milk industry. The decision was a victory for WLF, which filed a brief urging dismissal of the suit. The court agreed with WLF that Virginia law does not permit private citizens to seek injunctions against advertisements with which they disagree. WLF had also argued that the suit threatened to undermine manufacturers' commercial speech rights. WLF argued that if a manufacturer can be subjected to expensive lawsuits filed by activists who do not like statements the manufacturer makes on issues of public importance, then significant amounts of truthful speech will be chilled. WLF argued that the plaintiffs' real objection was not to the ads, but to what they view as inhumane treatment of cows. WLF argued that the courts should not allow the judicial process to be abused in this manner.

Status: Victory.

PATENTS -- INHERENT ANTICIPATION. *SmithKline Beecham Corp. v. Apotex Corp.* On June 19, 2006, the U.S. Supreme Court issued an order declining to review an appeals court decision that invalidated a significant pharmaceutical patent based on a finding that the drug was not "novel" when the patent application was filed in 1986 – even though it is undisputed that if the drug existed before then, it was in such minute quantities as to be undetectable. The order, issued without comment, was a setback for WLF, which filed a brief urging that review be granted. WLF argued that if allowed to stand, the decision of the U.S. Court of Appeals for the Federal Circuit would undermine confidence in the nation's patent system as an effective means of protecting intellectual property rights. WLF argued that under the doctrine of "accidental prior use," an invention should not be deemed to have been "anticipated" by the prior art if the prior art's disclosure of the claimed invention is accidental or unwitting and no one – not even experts in the field – would have recognized the existence of the disclosure. WLF argued that the challenged patent should have been upheld under the "accidental prior use" doctrine. WLF also filed briefs in the case – supporting the validity of the underlying patent – in the Federal Circuit in 2004 and 2005.

Status: Supreme Court review denied.

GOVERNMENT ACCOUNTABILITY -- UNITED STATES POSTAL SERVICE. *Dolan v. U.S. Postal Service.* On February 22, 2006, the U.S. Supreme Court ruled that the United States Postal Service (USPS) is not immune from lawsuits under the Federal Tort Claims Act (FTCA) where postal employees' negligence causes physical injuries and property damage to the public. The Court agreed with WLF's argument that Congress did not provide USPS with such special immunity and thus, it should be held liable just as private carriers would be held liable for similar negligent conduct. On July 18, 2005, WLF filed a brief in the Court on behalf of itself and the Allied Educational Foundation urging the Court to reverse a lower court decision and hold that the USPS is not immune from lawsuits under the FTCA where postal employees' negligence causes physical injuries and property damage to the public. In doing so, WLF stressed in its brief that the USPS should not be given special immunity in that regard, but should be held liable just as private carriers would be held liable for similar conduct. In *Dolan v. USPS*, the postal carrier delivered postal matter to Mrs. Dolan's home and negligently piled the mail and magazines on the porch by the door where a person leaving the home would likely step. Mrs. Dolan slipped on the mail and was severely injured. WLF argued that Congress only intended immunity for damage, loss, or delay of the mail itself, not for physical injuries due to negligence of postal employees. Such a broad reading would immunize USPS for accidents caused by postal vehicles transporting the mail, a result which Congress most certainly did not intend.

Status: Victory.

FIRST AMENDMENT -- COMPELLED SPEECH. *R.J. Reynolds Tobacco Co. v. Shewry.* On February 21, 2006, the U.S. Supreme Court declined to review an appeals court decision that rejected a First Amendment challenge to an advertising campaign conducted by the State of California. The Court's action, made without comment, was a setback for WLF, which

filed a brief urging the Court to review the appeals court ruling. WLF argued that the First Amendment prohibits a state from forcing a company to pay for advertisements that vilify the company. California imposes a special fee on the tobacco industry and then uses it to finance a \$25 million per-year ad campaign designed to prevent smoking by vilifying the tobacco industry. The advertisements repeatedly have called the tobacco industry "deceptive," a "dangerous enemy," and indifferent to the health of its customers, and have routinely accused the industry of lying to the public. WLF argued that the First Amendment protection against compelled financial support of speech to which one objects has been recognized repeatedly by the courts and applies just as strongly when the speaker is the government as it does when the speaker is a private party. WLF also filed briefs in the case when it was before the appeals court.

Status: Review denied.

TORT REFORM -- "JUNK SCIENCE." *Zito v. Zabarsky*. On May 16, 2006, the Appellate Division of the New York Supreme Court issued an order declining to reconsider a decision that permits expert testimony to be introduced in a medical malpractice case. The decision was a setback for WLF, which filed a brief urging reconsideration. WLF's brief argued that expert medical testimony must be excluded from court proceedings when it is based on "junk science." WLF argued that the testimony should have been excluded because the medical conclusions reached by the "experts" lacked support in the medical literature. The American Medical Association also urged the appeals court to reconsider its decision. WLF argued that allowing the "expert" testimony in this case was particularly inappropriate because it consisted of a claim that an FDA-drug had caused the plaintiff's disease, yet the drug in question has been marketed for decades without any indication in the medical literature that the drug can trigger that disease.

Status: Review denied.

ILLEGAL IMMIGRANTS -- TORT DAMAGES. *Paramount Citrus v. Superior Court*. On January 5, 2006, the California Supreme Court declined to review a trial court decision that allows illegal aliens who file tort actions to seek recovery for damages not yet incurred, and to base those damage claims on an assumption that they will remain in the United States for the remainder of their lives. The decision was a setback for WLF, which filed a brief urging the court to grant review. WLF argued that, because illegal aliens have no right to remain in this country, such damage claims should be limited to the amount of damages that would be incurred if the illegal alien returned to his native country. The case involves an illegal alien who was permanently disabled in a car accident. He seeks recovery of the cost of providing him "life care" for the next 50 years. The present value of such care is \$5.3 million if he remains in the United States, but only \$1.8 million if he returns to his native Mexico. WLF argued that because the plaintiff has no right to remain in this country, he has no right to recover damages computed based on an assumption that he will remain here. WLF also argued that granting the plaintiffs' damage claims would undermine federal immigration policy.

Status: Review denied; case now goes to trial.

SECURITIES CLASS ACTION ABUSE -- SHORT-SELLING PRACTICES. *WLF v. SEC*
On April 28, 2006, WLF settled this Freedom of Information Act case with the Securities and Exchange Commission (SEC). On June 30, 2005, WLF filed a lawsuit in U.S. District Court for the District of Columbia against the SEC for failing to provide certain documents WLF sought under the Freedom of Information Act (FOIA) relating to abusive class action and short-selling practices. As part of WLF's INVESTOR PROTECTION PROGRAM, WLF filed several complaints with the SEC requesting an investigation into the questionable relationship between short-sellers of stock (those who profit when the price of a stock drops) and class action attorneys who later sue the targeted company. Such suits usually cause the stock price to drop, and short-sellers profit at the expense of other stockholders. One complaint filed with the SEC by WLF in 2003 involved the short-selling of stock in J.C. Penney Co. that occurred shortly before and after the filing of a class action lawsuit against Eckerd Drug Store, which was then owned by J.C. Penney Co. WLF's SEC complaint requested that the SEC investigate whether there may have been a violation of the securities laws and regulations with respect to the timing of the lawsuit and the communications between the short-sellers of the company's stock and class counsel suing the company. The SEC agreed with WLF that it did not conduct a proper search for the documents and are providing WLF with certain documents, and provided WLF with certain documents in March and April 2006.

Status: Case settled.

FALSE CLAIMS ACT -- ABUSIVE USE OF RELATOR PROVISION. *Rockwell Int'l Corp. v. United States ex rel. Stone*
On December 5, 2006, oral argument was held before the Supreme Court in this important False Claims Act case. On October 25, 2006, WLF had filed a brief with the on behalf of itself and the Allied Educational Foundation, urging it to reverse a court of appeals decision that, if left intact, would greatly expand the ability of so-called relators and their attorneys to file abusive False Claims Act (FCA) cases against government contractors, contrary to the intent of Congress. The FCA forbids government contractors from submitting claims for payment to the federal government for goods or services where the work performed did not fully meet government requirements as specified in the contract. The FCA also has a very narrowly drafted "qui tam" provision that allows certain insiders or whistleblowers to file suit on behalf of the government if they are an original source of the information showing the claims were false. If they prevail at trial, the court may award them a "bounty" between 15 and 30 percent of the recovery from the contractor. WLF's brief was filed with the *pro bono* assistance of Alan I. Horowitz, Robert K. Hoffman, Peter B. Hutt, II, and R. Weston Donehower of the Washington, D.C., law firm of Miller & Chevalier.

Status: Awaiting decision.

FALSE CLAIMS ACT -- LIABILITY FOR AMBIGUOUS REGULATIONS. *R&F Properties of Lake County, Inc. v. U.S. ex rel. Walker.* On October 2, 2006, WLF filed a brief in the U.S. Supreme Court urging the Court to review and reverse a court of appeals decision that ruled that a company can be subject to substantial penalties under the False Claims Act, even though its billing practices were based on a reasonable interpretation of ambiguous agency regulations and contractual provisions. Unless the High Court reviews and reverses the decision, companies doing business with the federal government will be subject to unfair and ruinous civil suits by so-called private "relators" and their attorneys who stand to get a substantial "bounty" for bringing the suit, even though the government does not believe the case is worth its attention. WLF's brief was filed with the *pro bono* assistance of Woody N. Peterson and Andrew Jackson, partners in the Washington, D.C., office of Dickstein Shapiro LLP, and associate Justin A. Chiarodo.

Status: Review denied on November 6, 2006.

TORT REFORM -- FAIR CREDIT REPORTING ACT. *Safeco Insurance Co. of America v. Burr.* On November 13, 2006, WLF filed a brief in the U.S. Supreme Court, urging it to crack down on frivolous lawsuits filed by plaintiffs' attorneys against the insurance industry. Such suits allege technical violations of the Fair Credit Reporting Act (FCRA) yet seek billions of dollars in damages. WLF argued that the plaintiffs' lawyers do not claim that their clients suffered any real damages for alleged FCRA violations, and are simply trying to extort settlements from deep-pocketed defendants. WLF argued that the plaintiffs cannot show that any alleged violations were committed "willfully" and that the suits must be dismissed in the absence of such a showing. WLF also argued that no violations of the FCRA were committed. The suits, filed on behalf of large classes of consumers who each seek \$100 in damages, claim that insurance companies violated the FCRA by failing to notify consumers that they had taken "adverse action" by declining to offer their lowest rates.

Status: Oral argument scheduled for January 16, 2007.

HEALTH CARE -- FIRST AMENDMENT. *IMS Health Inc. v. Ayotte.* On November 30, 2006, WLF filed a brief in the U.S. District Court for the District of New Hampshire, urging it to protect First Amendment rights by striking down a New Hampshire law that blocks access to critical healthcare information. The law, which is unique to New Hampshire, criminalizes the collection and disclosure of information about the prescribing practices of physicians. WLF argued that the law violates the First Amendment by prohibiting disclosures of truthful information, even disclosures arising outside the context of advertising. WLF argued that such prohibitions are only rarely permissible and only then when based on showings of the most compelling of government needs. WLF argued that the information that New Hampshire is trying to ban plays a vital healthcare role; it is used to monitor the safety of medications, implement drug recalls, and rapidly communicate information to doctors about innovative new treatments.

Status: Awaiting trial in January 2007.

TORT REFORM -- FIRST AMENDMENT. *Raytheon Technical Services Co. v. Hyland*. On November 6, 2006, WLF filed a brief in the Virginia Supreme Court, urging it to protect First Amendment rights by imposing strict limits on the ability of disgruntled employees to file defamation actions against their employers based on unhappiness over statements made in annual performance evaluations. WLF argued that allowing employees to sue every time they disagree with a performance evaluation will cause corporations -- wary of the prospect of large jury verdicts -- to cease providing candid evaluations. WLF argued that by its very nature, a performance evaluation constitutes a supervisor's subjective judgment regarding how well an employee is performing and as such constitutes a nonactionable statement of opinion. WLF argued that statements in a performance evaluation (e.g., that an employee is incompetent or talks too much) should not be the subject of a defamation suit because they are virtually never provably true or false. The case is on appeal from a \$3.5 million jury verdict in favor of an employee who was upset about her supervisor's subjective evaluation of her job performance.

Status: Oral argument scheduled for January 9, 2007.

HEALTH CARE -- PRICE CONTROLS. *Biotechnology Industry Organization v. District of Columbia*. On December 29, 2006, WLF filed a brief in the U.S. Court of Appeals for the Federal Circuit, urging it to protect critical pharmaceutical research and development by striking down a District of Columbia law that imposes strict price controls on prescription drugs still covered by a patent. WLF argued that the law is preempted by federal patent laws because it interferes with the objective Congress sought to achieve in adopting the patent laws -- namely, to encourage innovation by rewarding those who expend the resources necessary to develop new products. WLF argued that the law (the "D.C. Act") stands as an obstacle to Congress's objectives because, by depressing prices, it prevents drug patent holders from reaping the rewards Congress intended to bestow. WLF filed its brief on behalf of itself; the Kidney Cancer Association, a group that advocates on behalf of patients suffering from kidney cancer; and the 60 Plus Association, a group that advocates on behalf of senior citizens. WLF also argued that the D.C. Act, if allowed to take effect, will have devastating long-term adverse effects on health care in this country. WLF argued that price controls on drugs stifle pharmaceutical research, with the inevitable result that fewer life-saving drugs will be developed. WLF noted that, on average, it takes anywhere from \$800 million to \$1.7 billion in research and development costs to get a drug approved for use in the U.S. Drug companies will be unwilling to invest such massive sums if State drug price controls deprive them of any assurance that they can recover those costs by utilizing the market advantages provided them under the patent system, WLF argued.

Status: Awaiting oral argument.

FIRST AMENDMENT -- HEALTH CARE DELIVERY. *Washington Legal Foundation v. Leavitt*. On August 24, 2006, WLF filed suit in U.S. District Court for the District of Columbia against CMS (the federal Centers for Medicare and Medicaid Services), alleging that CMS is trampling on First Amendment rights in seeking to suppress truthful speech

regarding insurance coverage available to senior citizens under Medicare Part D. Part D is the recently enacted Medicare program that offers insurance for the cost of prescription drugs. WLF filed suit on behalf of members who, as a result of CMS's actions, are unable to obtain accurate information about competing insurance providers. The suit seeks an injunction against continuation of CMS's policy. Ironically, the groups that CMS bars from providing truthful information - including nursing homes and pharmacies - are often the very groups that have the most knowledge regarding the health-care needs of Medicare recipients, WLF charged. WLF charged that CMS's rationales for its speech-suppression policies - including a concern that health care providers might accept kick-backs in return for recommending a particular insurance plan - do not justify its infringement on free speech rights. WLF noted that CMS may enforce anti-kickback statutes without suppressing speech. WLF asked the Court to enjoin CMS from continuing to bar providers from providing truthful information.

Status: WLF to file motion for preliminary injunction in January 2007.

DEPORTATION -- ALIEN FELONS. *Lopez v. Gonzales*. On December 5, 2006, the U.S. Supreme Court ruled that the federal government is not required to deport all aliens convicted of drug-related felonies. Rather, the Court held, a *state-court* drug-related felony conviction should not lead to *automatic* deportation unless the crime for which the alien was convicted would also have been deemed a felony under *federal* drug laws. The 8-1 decision was a setback for WLF, which had filed a brief urging the Court to permit the U.S. government to deport all aliens who commit felonies that are drug-related. WLF urged the Court to rule that such crimes are "aggravated felonies," which bar the alien from pleading extenuating circumstances as a reason to avoid deportation. Because his deportation is no longer deemed automatic, the alien is now permitted to apply for "cancellation of removal" and plead that extenuating circumstances should permit him to avoid deportation. The case before the Court involves Jose Lopez, a Mexican citizen who sneaked into the country illegally in the 1980's. Lopez was later convicted on felony cocaine charges and sentenced to five years imprisonment, but he is seeking to avoid deportation on the grounds that he has developed strong ties to this country and has only one felony conviction.

Status: Loss.

CRIMINALIZATION OF FREE ENTERPRISE -- NON-PROSECUTION AGREEMENTS. *Stolt-Nielsen S.A. v. United States*. On October 30, 2006, the U.S. Supreme Court declined to hear this challenge to the government's efforts to back out of a nonprosecution agreement. On September 20, 2006, WLF filed a brief in the U.S. Supreme Court, urging the Court to permit companies and individuals threatened with criminal prosecution to seek immediate judicial review of claims that nonprosecution agreements signed by the government render them immune from prosecution. WLF urged the Court to hear the case of a company whose nonprosecution agreement the federal government is refusing to honor. WLF argued that the hope of cutting an immunity deal is a principal reason that companies come forward with evidence, and that they will be far less willing to do so if they lack any effective means of

enforcing their deals. WLF argued that when a company bargains for immunity from indictment, the right to file a motion to dismiss a later indictment does not adequately remedy the government's breach. Rather, companies must be permitted to seek an injunction the moment that an indictment is threatened; otherwise, they are denied the benefit of their bargain. WLF filed its brief on behalf of itself, the National Association of Manufacturers, and the National Association of Criminal Defense Lawyers.

Status: Review denied.

ENVIRONMENTAL REGULATION -- CLEAN AIR ACT. *Environmental Defense v. Duke Energy Corp.* On November 1, 2006, oral argument was heard by the Supreme Court in this important case. On September 15, 2006, WLF filed a brief with the Court urging it to reject an attempt by several environmental groups and the Environmental Protection Agency (EPA) to overturn a court of appeals ruling in favor of Duke Energy Corporation regarding EPA's controversial interpretation of one of its major Clean Air Act regulations. EPA filed an enforcement action against Duke Energy in 1999 in federal court in North Carolina claiming that the power company violated EPA's 1980 Prevention of Significant Deterioration (PSD) rule by failing to get a permit when it modified its power plants. At issue is the EPA's recent interpretation of its 1980 PSD Rule that would require power companies to comply with the rule and incur huge costs, even though the modification would result in *less* emissions from its power plant. In its brief, WLF forcefully argued that the lower courts had jurisdiction to adjudicate Duke Energy's valid defense to the enforcement action brought by the EPA. WLF contended that Duke Energy was not challenging the 1980 PSD Rule itself, but EPA's more recent and inconsistent interpretation of that rule in the enforcement action. To rule otherwise would unfairly enable the EPA to escape any judicial review of its enforcement actions when it misinterprets the underlying statute and the language of the original rule itself.

Status: Awaiting decision.

SEPARATION OF POWERS --CONSTITUTIONALITY OF SARBANES-OXLEY. *Free Enterprise Fund v. PCAOB* On December 21, 2006, oral argument was heard in this important separation of powers case. On August 22, 2006, WLF filed a brief in the U.S. District Court for the District of Columbia urging the Court to strike down, as unconstitutional, the Public Company Accounting Oversight Board (PCAOB) established by Congress under the Sarbanes-Oxley Act of 2002. Congress gave the PCAOB massive and unchecked powers to regulate the auditing of publicly traded companies by public accounting firms, including the power to tax the firms and establish criminal penalties. Congress established the PCAOB as a private organization whose members are appointed by the Securities and Exchange Commission (SEC) rather than by the President as required by the Appointments Clause of Article II, and who are otherwise immune from control or removal by the President in violation of the separation of powers. More troubling, as WLF emphasized in its 20-page brief, Congress unconstitutionally delegated core legislative powers to the PCAOB. WLF's brief was drafted with the *pro bono* assistance of Kathryn Comerford

Todd, partner in the Washington, D.C. firm of Wiley, Rein & Fielding, LLP, and associates Thomas R. McCarthy and William S. Consovoy.

Status: Case pending.

CLASS ACTIONS -- EXCESSIVE ATTORNEYS' FEES. *Benney v. Sprint Corp.* On November 8, 2006, the court approved the settlement of this class action lawsuit. On July 12, 2006, WLF filed formal objections in the District Court of Wyandotte, Kansas to the proposed award of \$5 million in attorneys' fees to plaintiffs' counsel and \$10,000 to each of their five clients who are lead plaintiffs in a class action lawsuit. The suit was brought on behalf of current and former Sprint wireless customers, many of whom will receive only prepaid phone cards of nominal value as part of this nationwide class action settlement. WLF filed the objections on behalf of a former Sprint customer as part of its legal reform efforts to curtail abusive class action cases where absent class members often receive little or no compensation or worthless coupons, while class action attorneys reap millions of dollars. WLF argued in its objections that the phone card is of little value and utility, and that class counsel's requested fee of \$5 million is excessive in light of the meager results obtained in the case. WLF further argued that the court should defer ruling on the fee request until class counsel files a detailed report on the number and value of claims submitted, and provides full documentation for their fee request. In any event, WLF argued that the fee should be substantially reduced and reserved the right to file further objections after the plaintiffs' attorneys file their motions justifying the settlement and their fee request. WLF also argued that the \$10,000 cash award to each of the lead plaintiffs should be denied.

Status: Settlement approved; appeal pending.

FIRST AMENDMENT -- CALIFORNIA "UNFAIR COMPETITION" LAW. *Doe v. Wal-Mart Stores, Inc.* On December 5, 2006, oral argument was held in this important First Amendment case. On May 5, 2006, WLF filed a brief in U.S. District Court in Los Angeles, urging the Court to dismiss a lawsuit brought against Wal-Mart by activists who are critical of Wal-Mart's overseas labor practices. In response to such criticisms, Wal-Mart issued statements denying that it purchases products manufactured overseas under "sweat shop" conditions. The activists responded by filing suit against Wal-Mart under California's infamous "unfair competition" law, claiming that Wal-Mart's denials are false and constitute unfair competition. WLF's brief urged dismissal on the ground that the First Amendment fully protects Wal-Mart's right to speak out on issues of public importance, such as international labor conditions. WLF also urged dismissal of the plaintiffs' claims that overseas labor practices used by Wal-Mart's suppliers violate international human rights laws because they constitute "slavery."

Status: Awaiting decision.

TORT REFORM -- UNETHICAL ATTORNEY CONDUCT. *In re Congoleum Corp.* On June 9, 2006, WLF filed a brief in the U.S. District Court for the District of New Jersey,

urging it to uphold a \$9 million sanction imposed by a bankruptcy judge on a Washington, D.C., law firm for its unethical behavior while representing a company that filed for bankruptcy in the face of massive asbestos liability litigation. WLF argued that the law firm of Gilbert Heintz & Randolph (GHR) should be required to disgorge all legal fees it was paid during the course of bankruptcy proceedings. WLF noted that last year the U.S. Court of Appeals for the Third Circuit removed GHR from the case because of the firm's unethical conduct. WLF argued that GHR had done tremendous damage to the bankruptcy system by undermining public confidence in the integrity of that system, particularly with respect to asbestos-related bankruptcies. WLF argued that disgorgement of fees is an appropriate remedy in that it will provide at least partial compensation for the losses caused by GHR.

Status: Awaiting decision.

TORT REFORM -- ALIEN TORT STATUTE. *Abdullahi v. Pfizer*. On May 24, 2006, WLF filed a brief in the U.S. Court of Appeals for the Second Circuit, urging it to dismiss claims that a drug company violated international law when a team of its doctors provided emergency medical aid to children in Nigeria suffering from meningitis. WLF argued that federal law does not permit private parties to file tort suits asserting that doctors violated international law by allegedly treating patients without first obtaining the patients' informed consent. WLF urged the court to reject claims that such suits are authorized by the Alien Tort Statute (ATS), a law that lay dormant for nearly 200 years before activists recently began seeking to invoke it. WLF argued that the ATS was adopted in 1789 to allow the federal courts to hear cases involving piracy and assaults on ambassadors. WLF argued that it has been transformed by activist attorneys into a tool for second-guessing American foreign policy and for attacking the overseas conduct of corporations.

Status: Awaiting oral argument.

COMMERCE CLAUSE -- STATE TAXATION. *McLane Western, Inc. v. Department of Revenue*. On October 2, 2006, the U.S. Supreme Court declined to hear a Commerce Clause challenge to a Colorado tax. On June 12, 2006, WLF had filed a brief urging the Court to review (and ultimately overturn) a court decision upholding a Colorado excise tax that imposes higher taxes on out-of-state companies than on Colorado companies. WLF argued that taxes, such as the Colorado tax at issue here, that discriminate against interstate commerce violate the Constitution's Commerce Clause. WLF also argued that such taxes interfere with the unrestricted flow of commerce and can damage the national economy. The petitioner in this case purchases the products subject to the tax fairly late in the distribution chain, from an out-of-state distributor. The "tax base" used in computing the excise tax is the purchase price paid by whichever distributor first brings the products into Colorado. Thus the petitioner pays a higher tax than when the same products are brought into the state at an earlier stage of the distribution chain (before all distribution mark-ups have been added to the price).

Status: Review denied.

ANTITRUST LAW -- PLEADINGS STANDARDS. *Bell Atlantic v. Twombly.* On November 27, 2006, oral argument was held in this important antitrust case, which will provide the U.S. Supreme Court with an opportunity to crack down on frivolous antitrust lawsuits by making it easier for defendants to win dismissal of such suits before being forced to incur the huge expense of discovery. In its brief urging the Court to review the case, WLF argued that unless antitrust defendants are provided a fair opportunity to win early dismissal, they will often end up agreeing to pay plaintiffs to settle meritless claims. The case involves an antitrust suit against the four principal companies that maintain local telephone networks in this country. The plaintiffs claim that the companies conspired to suppress competition for local telephone service, but they have provided no evidence to support that claim. WLF argued that in the absence of such evidence, the lower courts should have granted the defendants' motion to dismiss the case prior to discovery.

Status: Awaiting decision.

CLASS ACTIONS -- EXCESSIVE ATTORNEYS' FEES. *Chance v. United States Tobacco, Co.* On April 3, 2006, WLF filed a brief in the District Court of Seward County, Kansas, opposing a fee request by plaintiffs' attorneys for \$22.5 million for settling a class action lawsuit where users of smokeless tobacco products will receive only coupons toward the purchase of future products. WLF argued that the coupon settlement was highly inflated, and that the court should base any fee on the hourly rate which plaintiffs estimate to be \$4.6 million, and which defendants estimate to be more like \$3.6 million. WLF cited cases where coupon redemption rates were only in the 3 to 6 percent range, and where part of the attorneys' fees were ordered to be paid in coupons. The recent federal Class Action Fairness Act as well as the law in Texas, provides that fees should be based on the amount of coupons actually redeemed.

Status: Awaiting decision.

SECURITIES CLASS ACTIONS -- PRIVATE RIGHT OF ACTION. *Neer v. Pelino.* On May 17, 2006, WLF filed a brief with the U.S. Court of Appeals for the Third Circuit in Philadelphia urging the court to affirm a lower court decision that a private litigant does not have the right under Section 304 of the Sarbanes-Oxley Act (SOX) to sue officers and directors of a publicly traded company to disgorge bonuses and profits for alleged errors in the company's accounting statements filed with the Securities and Exchange Commission (SEC). Instead, WLF argued that Congress intended for only the SEC to have the authority to enforce the penalty provision. WLF argued that Congress did not manifest any intent to allow private litigants to enforce the penalty provision and that to permit such suits would be contrary to sound public policy. In particular, enforcement of Section 304 would not be uniform and may cause officers to unfairly disgorge profits when their conduct was not blameworthy to avoid expensive lawsuits. In addition, since the disgorgement is required to be returned to the company and its shareholders, plaintiffs' attorney fees would be siphoned from the penalty imposed, whereas all the funds would be returned if the SEC imposed the penalty.

Status: Oral argument scheduled for February 26, 2007.

CRIMINALIZATION -- U.S. SENTENCING GUIDELINES. *Thurston v. United States.* On July 26, 2006, the U.S. Court of Appeals for the First Circuit in Boston reversed a three-month prison sentence that was imposed by two different district court judges on two separate occasions, and ordered that the defendant be resentenced for a *third* time to a sentence of at least three years. On March 20, 2006, WLF filed a brief in the court of appeals opposing an appeal by the Justice Department seeking to have a businessman resentenced to five years in prison despite the fact that prosecutors plea bargained with a more culpable co-defendant to receive only probation for pleading *nolo contendere*. In effect, the Justice Department took the extreme position that even though the Sentencing Guidelines were ruled unconstitutional by the U.S. Supreme Court last year and are no longer mandatory, the trial court should have treated the voluntary guidelines as if they were mandatory, and that Mr. Thurston should have received the maximum statutory sentence. WLF previously filed a brief in the case in late 2004 in the Supreme Court urging the Court to review and reverse the court of appeals decision, and successfully argued that the courts should be allowed to depart from the draconian sentences dictated by the Guidelines, particularly in those cases where imposing the Guidelines would result in gross disparities of sentences with co-defendants. The entire purpose of the Guidelines was to reduce sentence disparity. Thurston filed a petition for writ of certiorari to the Supreme Court in September.

Status: Loss. Petition for Supreme Court review pending.

TORT REFORM -- STATUTE OF LIMITATIONS. *Grisham v. Philip Morris USA, Inc.* Oral argument was held on December 6, 2006 in this important tort reform case. On March 9, 2006, WLF had filed a brief in the California Supreme Court, urging it to uphold the dismissal of tort claims filed against cigarette companies based on allegations that the companies wrongfully addicted the plaintiffs to tobacco. WLF argued that such claims by long-time smokers are barred by the statute of limitations because the plaintiffs knew (or should have known) for decades that they were addicted to cigarettes, yet they waited until 2002 to file suit. WLF urged the court to reject the plaintiffs' contentions that their addiction to tobacco rendered them incapable of recognizing their addiction. The public has known for decades that tobacco is addictive, WLF argued; if there were any doubt on that score, it was eliminated in 1988 when the Surgeon General confirmed that tobacco is addictive. In light of that knowledge, individuals who sue based on claims that they were wrongfully addicted should not be permitted to wait for decades before filing suit, WLF argued.

Status: Awaiting decision.

GOVERNMENT CONTRACTOR DEFENSE -- INTERNATIONAL LAW CLAIMS. *Vietnam Assoc. for Victims of Agent Orange v. Dow Chemical Co.* On February 13, 2006, WLF filed a brief in the U.S. Court of Appeals for the Second Circuit urging the court to reject a class action lawsuit brought on behalf of Vietnamese nationals, including former

North Vietnamese and Viet Cong fighters, against a group of American chemical companies for their role in producing Agent Orange during the Vietnam War. The plaintiffs, the Vietnam Association for Victims of Agent Orange/Dioxin ("VAVAO") and various Vietnamese nationals, claim that the U.S. military's herbicide spraying program during the war was illegal under international law. In its brief, WLF focused on the applicability of the government contractor defense to international law claims, arguing that the defense does apply to such claims. WLF noted that allowing tort suits against defense contractors based on alleged violations of the laws of war by U.S. forces would be inequitable and would have serious deleterious effects on military procurement.

Status: Awaiting oral argument.

GLOBAL WARMING -- ENVIRONMENTAL REGULATION. *Connecticut v. American Electric Power Company*. On June 7, 2006, oral argument was held in this important global warming case. On March 2, 2006, WLF filed a brief in the U.S. Court of Appeals for the Second Circuit in New York on behalf of itself and its client, U.S. Senator James M. Inhofe, Chairman of the Senate Environment and Public Works Committee, urging the court to reject an appeal filed by several states and environmental groups claiming that global warming is a public nuisance, and that the courts should order the major power companies to restrict their carbon dioxide emissions. The States of Connecticut, New York, California, Iowa, New Jersey, Rhode Island, Vermont, and Wisconsin sued American Electric Power Company, Southern Company, XCel Energy, Inc., Cinergy Corp., and the Tennessee Valley Authority (TVA) in federal court in New York City claiming that global warming constitutes a legal and actionable public nuisance under federal common law. A related lawsuit was filed against the same power companies by the Open Space Institute, the Open Space Conservancy, and the Audubon Society of New Hampshire. WLF argued in its brief that the district court was correct in dismissing the case on political question grounds because the policy issues involved in the case should be resolved by the political branches rather than by a federal court. WLF argued that the Congress has repeatedly rejected proposed legislation and the Kyoto Treaty that would impose unfair mandatory caps on carbon dioxide emissions on U.S. power companies while leaving countries such as China and India free from any constraints.

Status: Awaiting decision.

LEGAL REFORM -- ASBESTOS LIABILITY. *Rehm v. Navistar*. On January 6, 2006, WLF, along with a dozen leading industry and insurance trade organizations, urged the Kentucky Supreme Court to affirm a lower court ruling rejecting attempts to circumvent Kentucky workers' compensation program. In *Rehm v. Navistar*, the plaintiff was an employee of a company that installs industrial conveyor systems and machinery. That company was hired as a subcontractor over the years by some 15 different companies to install such equipment at their facilities. The plaintiff claims he was exposed to asbestos at those premises and contracted malignant mesothelioma. Under Kentucky law, a contractor becomes a statutory employer, and thus is immune from tort liability, if the work it

subcontracted is a "regular or recurrent" part of the work or trade of the contractor. In that circumstance, injured employees are compensated under the state's workers' compensation program and cannot sue the companies separately under tort liability.

Status: Awaiting decision.

ANTITRUST -- PREDATORY BUYING. *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.* On November 28, 2006, oral argument was held before the U.S. Supreme Court in this important antitrust case that could impose substantial antitrust liability on a large company for engaging in "predatory buying" (*i.e.*, buying supplies at too *high* a price), even though the uncontested evidence demonstrated that the company at all times sold its products at prices that exceeded its costs. In its brief successfully urging the Court to review the case, WLF argued that consumers, as well as the economy as a whole, benefit when companies bid up the prices of goods they seek and that companies should not be punished for engaging in buying competition that is good for consumers. WLF argued that the lower court decision, unless reversed on appeal, will chill pro-consumer activity by companies that seek to avoid potential antitrust liability.

Status: Awaiting decision.

ILLEGAL ALIENS -- COLLEGE TUITION RATES. *Day v. Bond.* Oral argument was held on September 27, 2006 in this important immigration case. On October 25, 2005, WLF had filed a brief in the U.S. Court of Appeals for the Tenth Circuit in Denver, urging the court to reinstate a challenge to a Kansas statute that, WLF charges, violates the civil rights of U.S. citizens who live outside the state. The statute grants illegal aliens the right to attend Kansas universities at in-state rates but denies that same right to U.S. citizens who live outside of Kansas. WLF argued that the Kansas law violates a 1996 federal statute that prohibits states from granting more favorable tuition rates to illegal aliens than they grant to citizens. A federal district court dismissed the suit earlier this year on procedural grounds; WLF urged the appeals court to overturn that dismissal. WLF filed its brief on behalf of Brigitte Brennan, who attended and graduated from a Kansas high school and has been living for the past four years in Kansas while attending the University of Kansas. But Kansas has refused to offer her in-state tuition rates because she lived in Kansas City, Missouri, while attending high school. The result is that she is paying considerably higher tuition than do illegal aliens who lived in Kansas illegally while attending high school and whose presence in this country continues to be illegal. WLF also filed its brief on behalf of itself and the Allied Educational Foundation.

Status: Awaiting decision.

EXPERT TESTIMONY -- CHEMICAL EXPOSURE. *Aguilar v. ExxonMobil Corp. (Lockheed Litigation Cases).* On October 10, 2005, WLF filed a brief in the California Supreme Court asking the Court to affirm an appeals court ruling that recognized the need for California trial judges to assess the testimony of expert witnesses for validity. The

proceeding involves claims by former workers at a Lockheed aerospace plant that their exposure to five solvent chemicals in the workplace caused them to become sick with cancer. The plaintiffs seek to present an expert witness to testify that their cancer was, in fact, caused by those chemicals. The issue before the California Supreme Court is the admissibility of the testimony of that witness where none of the articles and other materials on which he relies demonstrates a link between the chemicals involved and cancer in humans. In its brief, WLF argued that the decisions of the trial court and the Court of Appeal to exclude this testimony were proper.

Status: Awaiting oral argument.

TORT REFORM -- FIRST AMENDMENT. *In re Tobacco Cases II.* On September 14, 2005, WLF filed a brief in the California Supreme Court, urging the court to uphold the dismissal of tort claims filed against tobacco companies for having run truthful advertising that allegedly overglamorized smoking. WLF argued that such claims are barred both by the First Amendment and by federal law -- regardless of the plaintiffs' claim that glamorous advertisements induce minors to buy cigarettes in violation of California law. WLF argued that cigarette advertising is already heavily regulated at the federal level (by the Federal Cigarette Labeling and Advertising Act and by oversight conducted by the Federal Trade Commission), and at the state level by state regulators (by virtue of the Master Settlement Agreement entered into between tobacco companies and state attorneys general). WLF argued that there is no reason to permit an additional level of advertising regulation, in the form of tort suits filed under state law. WLF also noted that the plaintiffs seeking recovery are all admitted lawbreakers (they purchased cigarettes while under age 18) and argued that they should not be rewarded for their misconduct.

Status: Awaiting oral argument.

FEDERAL REGULATION -- EXCESSIVE PUNISHMENT. *United States v. RxDepot, Inc.* On February 22, 2006, the U.S. Court of Appeals for the Tenth Circuit in Denver declined an opportunity to prevent FDA from exercising enforcement powers that the evidence suggests were never delegated to it by Congress. The court's decision, affirming FDA's authority to seek a massive damage award against an internet pharmaceutical distributor, was a setback for WLF, which had filed a brief urging the court to deny FDA that authority. In its brief, WLF argued that FDA has no power to seek disgorgement or restitution from companies alleged to have violated federal drug laws. WLF argued that Congress has spelled out precisely what enforcement powers it has given to FDA, and that disgorgement and restitution are not among them. WLF argued that FDA, throughout most of its history, never asserted a right to seek disgorgement; WLF charged that FDA only recently began asserting that power in order to have a big club with which to intimidate manufacturers who might otherwise seek to challenge FDA. The Tenth Circuit disagreed; it upheld FDA's authority to seek restitution, finding that the FDCA's grant of authority to "restrain" violations of the Act should be read broadly to include all forms of injunctive relief.

Status: Loss. Petition for Supreme Court denied October 2, 2006.

NATIONAL SECURITY -- DETENTION OF ALIEN ENEMY COMBATANTS. *Al Odah v. United States.* On March 22, 2006, oral argument was held in this important national security case. WLF continues its long running support of Bush Administration policy in this challenge to the detention of suspected al Qaeda terrorists at Guantanamo Bay, Cuba. During the nearly five years that the consolidated challenges have been pending in federal courts in the District of Columbia, Congress has passed a series of laws that have restricted the courts' jurisdiction to hear such cases. The most recent federal law, the Military Commissions Act of 2006, declares that federal courts have no habeas corpus jurisdiction over Guantanamo Bay detainee suits. WLF has filed numerous briefs in the case. Its most recent brief urged the U.S. Court of Appeals for the District of Columbia Circuit to rule that Congress acted constitutionally in withdrawing jurisdiction. WLF also filed a brief in April 2005, contesting the merits of the detainees' claims. WLF argued that the U.S. Constitution does not extend protections to aliens not living in the United States. WLF argued that the protections of the Constitution are reserved for U.S. citizens and others, such as resident aliens, who have contributed to American society and thus have a legitimate basis for invoking constitutional protections. WLF also argued that even if detainees were entitled to Due Process Clause protections, they have already received all the process that could possibly be due them under the Constitution, noting that the military has established review tribunals to hear claims of innocence. All of those still being detained at Guantanamo Bay have been determined by a tribunal to be enemy combatants who took up arms against the United States or its allies. WLF argued that the tribunal system satisfies the detainees' due process concerns, because it ensures that all detainees have a fair opportunity to contest their detention. WLF filed its briefs on behalf of itself and the Allied Educational Foundation.

Status: Awaiting decision.

ENVIRONMENTAL LAW -- MERCURY EMISSIONS LEVELS. *New Jersey v. EPA.* On June 29, 2005, the U.S. Court of Appeals for the District of Columbia granted WLF's motion to file a brief in this important Clean Air Act case. The EPA revised and reversed its December 2000 finding that it was "appropriate and necessary" to regulate coal- and oil-fired electric utility steam generating units ("Utility Units") under Section 112(n)(1)(A) of the Clean Air Act (CAA). Based on that action, EPA removed Utility Units from the CAA § 112(c) source category list. EPA determined that it was not "appropriate and necessary" to regulate mercury emissions from Utility Units based, in part, on a review of scientific evidence concerning asserted adverse human health effects of mercury emissions. Instead, the EPA proposes to regulate mercury emissions under the New Source Performance Standards (NSPS) of Section 111 of the Clean Air Act. In its amicus brief to be filed, WLF will review the scientific evidence in the record and demonstrate that it is not "appropriate and necessary" to regulate mercury emissions from Utility Units because such emissions do not represent a meaningful threat to human health.

Status: Case pending; briefs to be filed in mid-2007.

CLASS ACTION -- ATTORNEYS' FEES. *LiPuma v. American Express*. On February 14, 2005, WLF filed a brief in federal court in Miami objecting to a proposed class action settlement against American Express Company, including \$11 million in attorneys' fees. A hearing was held on March 8, 2005. The suit claims that American Express improperly assessed and disclosed adjustments to foreign currency conversions for cardholders who used their American Express card overseas during the last five years. The adjustments, or surcharge, amounted to 1-2 percent of the currency conversion rate. WLF argued in its objections, filed on behalf of a class member from Atlanta, that the settlement was not fair, reasonable, or adequate, arguing that class members' accounts should be automatically credited without the necessity of their submitting claim forms since the account information is readily available to American Express. More importantly, WLF objected to the proposed attorneys' fees of \$11 million as being excessive, particularly because the suit appeared to be a copycat suit filed after a California trial court ruled against Visa and MasterCard for similar conduct. WLF also requested that the March 15 Final Hearing be postponed until 30 days after the attorneys file their formal fee request, and that WLF and all objectors be afforded an opportunity to further respond to that request as permitted by the rules. WLF also opposed so-called "incentive payments" of \$10,000 to lead plaintiffs. On December 22, 2005, the court approved the terms of the settlement, but reserved ruling on the application for attorneys' fees.

Status: Settlement approved; appeal pending.

CLASS ACTIONS -- EMPLOYMENT DISCRIMINATION. *Dukes v. Wal-Mart Stores*. On August 8, 2005, oral argument was held in this important class action case. On December 8, 2004, WLF had filed a brief in the U.S. Court of Appeals for the Ninth Circuit in San Francisco, urging the court to overturn a lower court decision that certified a massive class action against retailer Wal-Mart. The suit was filed by a small number of female Wal-Mart employees who claim that the company denied them equal pay and opportunities for promotion. But the trial court has certified them as representatives of a class of 1.6 million current and former female employees. WLF argued that the plaintiffs failed to demonstrate that the case could manageably be tried as a class action. WLF was particularly critical of the trial court's decision to rely on the testimony of the plaintiffs' "expert" witness; WLF argued that the plaintiffs failed to establish that the testimony met the standard of "scientific reliability" and thus the testimony never should have been admitted into evidence. WLF's brief was prepared with the *pro bono* assistance of James P. Muehlberger and William C. Martucci of the Kansas City law firm of Shook, Hardy & Bacon, L.L.P.

Status: Awaiting decision.

CLASS ACTIONS -- LACK OF COMMON ISSUES. *Engle v. Liggett Group, Inc.* On December 21, 2006, rehearing was denied in this important class action case. On July 6, 2006, the Florida Supreme Court rebuffed efforts by plaintiffs' lawyers to reinstate a \$145 billion punitive damages judgment against the tobacco industry, awarded by a trial court to a class consisting of all Florida smokers who have contracted diseases caused by cigarettes.

The decision was a victory for WLF, which filed a brief on behalf of itself and the National Association of Manufacturers urging that the judgment, which had been reversed by an intermediate appellate court, not be reinstated. The Florida Supreme Court agreed with WLF that the punitive damages award was improper because it had been entered without any determination that the approximately 700,000 plaintiffs had a valid basis for recovery. While a jury determined that tobacco companies had acted wrongfully in the manner in which they marketed their products, the court said that a determination of liability would have to await such factual determinations as whether the companies' conduct caused each plaintiff's injuries, whether that plaintiff relied on industry misstatements in deciding to smoke, the extent of each plaintiff's injuries, and the extent to which that plaintiff's own negligent conduct contributed to his or her injuries. Moreover, the court said that such factual determinations are necessarily individualized and thus cannot be made on a class-wide basis - thereby precluding further use of class action proceedings in this case. The court held that any Floridian claiming to have suffered pre-1997 injuries due to smoking would be permitted to file a separate suit and rely on the jury's determination of tobacco industry wrongdoing; but each such plaintiff would be required to demonstrate causation, reliance, comparative fault, and damages on an individualized basis.

Status: Victory.

EXPERT TESTIMONY -- PROFESSIONAL PEER REVIEW. *Fullerton v. Florida Medical Assoc.* On July 11, 2006, the Florida District Court of Appeal reinstated a defamation lawsuit filed by a doctor against the Florida Medical Association (FMA) and several other doctors, based on the defendants having instigated professional peer review of the plaintiff's expert testimony in a medical malpractice suit. The defendants had begun their investigation because they did not believe that the opinions expressed by the plaintiff doctor in his expert testimony demonstrated professional competence. The decision was a setback for WLF, which filed a brief in the case, urging that the trial court's dismissal of the case be upheld. WLF argued that both Florida law and a federal statute (the Health Care Quality Improvement Act of 1986) provide immunity from money damages to doctors who criticize their peers in connection with peer review proceedings. In reinstating the defamation lawsuit, the appeals court ruled that immunity extends only to complaints regarding a doctor's competence in treating an actual patient, not to competence in expert testimony. The physician who brought the case, Dr. John Fullerton, had testified in an earlier, unsuccessful medical malpractice action. After the conclusion of that action, the doctors against whom Dr. Fullerton had testified wrote a letter of complaint to the FMA in 2003, alleging that his testimony was false and financially motivated. They further requested an investigation of Dr. Fullerton's testimony. That letter is the basis of the present lawsuit. Florida attorney Rebecca O'Dell Townsend provided *pro bono* assistance to WLF in connection with its filing.

Status: Loss.

LEGAL REFORM -- PUNITIVE DAMAGES. *City of Hope Medical Center v. Genentech, Inc.* On January 26, 2006, WLF filed a brief the California Supreme Court urging it to reverse a court of appeal ruling that upheld a compensatory damages award of \$300 million along with an unprecedented \$200 million punitive damages award against Genentech, a biotech company. The company was involved in a contract dispute over royalties with City of Hope Medical Center which developed synthesized DNA material. If not overturned on appeal, businesses involved in typical contract disputes risk debilitating lawsuits by plaintiffs' attorneys not only for normal contract damages, but also for multimillion dollar punitive damages awards. The \$200 million award was in addition to the \$300 million compensatory damages award, bringing the total to \$500 million. WLF argued in its brief that if the decision were left intact, all businesses involved in typical contract disputes are at risk for lawsuits by plaintiffs' attorneys not only for normal contract damages, but also for multimillion dollar punitive damages awards. WLF also argued that the excessive award was not justified and should not have been imposed simply because the company could afford to pay the amount without going bankrupt.

Status: Awaiting decision.

NATIONAL SECURITY -- SUITS AGAINST TERRORIST NATIONS. *Jacobsen v. Oliver.* On September 12, 2006, the U.S. District Court for the District of Columbia ruled that victims of Middle East terrorism are not permitted to seek punitive damages against MOIS (the Iranian foreign intelligence agency) based on MOIS's active involvement in Hezbollah's terrorist activities. The decision was a setback for WLF, which filed a brief urging the court to rule that MOIS could be forced to pay punitive damages. WLF argued that allowing punitive damage awards against government sponsors of terrorism will make it less likely that governments will be willing to provide such support in the future. WLF filed its brief in conjunction with the Jewish Institute for National Security Affairs (JINSA). The case involved David Jacobsen, an American who was kidnapped by the terrorist organization Hezbollah and held hostage for several years in the 1980s in Lebanon. The issue before the district court was whether MOIS, as an arm of the government of Iran, was entitled to sovereign immunity. WLF's brief argued that MOIS was not entitled to immunity from suit to the extent that it engaged in the kidnapping and torture of Americans. Although Iran has been designated as a state sponsor of terrorism, federal law imposes strict limits on the ability of an individual to seek damages in federal court against a foreign state. WLF argued that MOIS is not synonymous with the Islamic Republic of Iran but, rather, should be deemed an "agent or instrumentality" of Iran and thus liable for punitive damage awards; but the court disagreed. The court rejected WLF's argument that providing support for terrorists around the world is not a legitimate, core government function and thus does not warrant special protection from damage awards. Joel J. Sprayregan and Jared M. White, attorneys in Chicago, assisted in preparing WLF's brief.

Status: Loss.

LEGAL REFORM -- CLASS ACTIONS. *Avery v. State Farm Mut. Automobile Ins. Co.* On August 17, 2005, the Illinois Supreme Court overturned a massive \$1.2 billion judgment against auto insurer State Farm, which (when issued) was the largest judgment ever rendered in Illinois. The decision was a victory for WLF, which has filed three separate briefs over the course of the past seven years seeking to overturn the judgment. The case involved charges that State Farm defrauded its customers by requiring them to use generic parts (rather than parts manufactured by the original manufacturer) when having their cars repaired. Most consumer groups and many states favor use of generic parts as a way of holding down repair costs. In its briefs, WLF had argued that State Farm had done nothing wrong and that the suit was unlikely to benefit any consumers but could result in huge fees for the attorneys masterminding the litigation. The Illinois Supreme Court agreed with WLF that the case never should have been certified as a nationwide class action and that, in any event, the plaintiffs failed to establish breach of contract or consumer fraud.

Status: Victory. Petition for Supreme Court review denied March 6, 2006.

PATENTS -- INEQUITABLE CONDUCT. *Purdue Pharma L.P. v. Endo Pharmaceuticals, Inc.* On February 1, 2006, the U.S. Court of Appeals for the Federal Circuit reversed its earlier decision to invalidate a multi-billion dollar pharmaceutical patent, and remanded the case to the district court to consider the invalidity issue anew. The decision was a major victory for WLF, which filed a brief in June 2005, urging the three-judge appeals court panel to reverse its prior decision. Particularly gratifying to WLF was that the panel reversed itself based on the precise arguments raised by WLF in its brief. The case now returns to the U.S. District Court for the Southern District of New York for reconsideration of the patent invalidity issue. Based on guidance provided by the appeals court regarding how the issue should be resolved, it was likely that the district court will ultimately uphold the patent. The patent at issue covers OxyContin, a powerful pain relief medication. A federal district court ruled in 2004 (and the appeals court panel affirmed in June 2005) that the patent should be invalidated as a penalty for alleged "inequitable conduct" committed by the drug's manufacturer when applying to the Patent and Trademark Office (PTO) for the patent. A patent can be invalidated on those grounds only upon a showing that the applicant omitted "material" information from its patent application and did so intending to deceive the PTO. WLF argued (and the latest appeals court decision largely agreed) that the district court improperly lowered the bar for demonstrating inequitable conduct by applying far too lax standards for intent. WLF argued that any information withheld in this case was trivial and that there was no evidence that the manufacturer intended to deceive the PTO.

Status: Victory.

PRODUCTS LIABILITY -- CLASS ACTIONS. *U.S. ex rel. Gilligan v. Medtronic, Inc.* On April 6, 2005, the U.S. Court of Appeals for the Sixth Circuit in Cincinnati dismissed a lawsuit that sought to second-guess decisions of the Food and Drug Administration (FDA) authorizing the sale of drugs or medical devices. The decision was a victory for WLF, which filed a brief in support of the manufacturer whose product was being challenged.

WLF argued that permitting such suits to go forward would undermine the integrity of FDA's product-approval system and could result in patients being denied access to life-saving medical products. Although it dismissed the lawsuit, the Sixth Circuit did so on narrower grounds than WLF had argued. The plaintiffs were suing under the False Claims Act (FCA), a federal law that permits bounty-hunting private citizens to file a suit in the name of the federal government against anyone who makes a "false claim" to the government. They alleged that the defendant, a medical device manufacturer, induced health care providers to falsely claim that the manufacturer's products had been properly approved by FDA. The Sixth Circuit held that the information on which the plaintiffs based their lawsuit was publicly available before they filed suit. The appeals court held that under those circumstances, the FCA suit was barred by the "public disclosure" bar, which eliminates federal court jurisdiction over an FCA claim where the plaintiff is not the original source of the allegations.

Status: Victory. Petition for Supreme Court review denied January 9, 2006.

ILLEGAL IMMIGRANTS -- LOST WAGES. *Balbuena v. IDR Realty LLC.* On February 21, 2006, the New York Court of Appeals declined to bar illegal aliens who are plaintiffs in personal injury lawsuits from recovering wages lost as a result of their injuries. The decision was a setback for WLF, which filed a brief in the case, urging that such damages be barred. WLF argued that awarding illegal aliens the wages they would have earned if they had not been injured would be inequitable because it would have been illegal for them to actually earn those wages by taking a job in this country. WLF argued that such awards are preempted by federal law because they undermine federal immigration policy by encouraging more illegal aliens to enter the country and seek employment. The Court of Appeals rejected WLF's position, contending that to deny damages for lost wages would encourage employers to reap the economic benefits of hiring illegal aliens. This personal injury tort suit was filed by Gorgonio Balbuena, an illegal alien who was severely injured while working for Taman. Balbuena alleges that his injuries were caused by Taman's negligence. Because Taman no longer exists, Balbuena filed suit against (among others) IDR Realty LLC, which owns the property where the injury occurred. Balbuena's right to recover for his injuries and medical expenses was not challenged; but WLF challenged Balbuena's claim that he is entitled to recover the wages he could have earned in this country had he not been injured. WLF's brief was drafted with the *pro bono* assistance of Timothy R. Capowski, Steven J. Ahmuty, and Christopher Simone, lawyers with the firm of Shaub, Ahmuty, Citrin & Spratt, LLP in Lake Success, New York.

Status: Loss.

FEDERAL REGULATION -- EXCESSIVE PUNISHMENT. *United States v. Rx Depot, Inc.* On February 22, 2006, the U.S. Court of Appeals for the Tenth Circuit in Denver declined an opportunity to prevent FDA from exercising enforcement powers that the evidence suggests were never delegated to it by Congress. The court's decision, affirming FDA's authority to seek a massive damage award against an internet pharmaceutical

distributor, was a setback for WLF, which had filed a brief urging the court to deny FDA that authority. In its brief, WLF argued that FDA has no power to seek disgorgement or restitution from companies alleged to have violated federal drug laws. WLF argued that Congress has spelled out precisely what enforcement powers it has given to FDA, and that disgorgement and restitution are not among them. WLF argued that FDA, throughout most of its history, never asserted a right to seek disgorgement; WLF charged that FDA only recently began asserting that power in order to have a big club with which to intimidate manufacturers who might otherwise seek to challenge FDA. The Tenth Circuit disagreed; it upheld FDA's authority to seek restitution, finding that the FDCA's grant of authority to "restrain" violations of the Act should be read broadly to include all forms of injunctive relief.

Status: Loss.

STATE TAXATION -- RESTRICTIONS ON COMMERCE. *Kiley v. Calif. Dep't of Alcoholic Beverage Control*. On May 24, 2006, the California Supreme Court issued an order declining to review the dismissal of a suit designed to impose significant restrictions on flavored malt beverage (FMB) sales by increasing taxes and prohibiting their sale in convenience and grocery stores statewide. The decision was a victory for WLF, which had filed a brief urging that review be denied because the appeals court had acted properly in dismissing the suit. WLF argued that California's long-standing policy of classifying FMBs as "beer" for regulatory purposes fully complies with California law. WLF further argued that the appeals court properly deferred to the Department of Alcoholic Beverage Control's (ABC) interpretation of relevant statutes. WLF argued that further review of the case was particularly unwarranted in light of the California legislature's ongoing review of FMB sales regulations; WLF argued that it makes little sense for the Court to review the ABC's compliance with existing statutes given that those statutes may be amended in the near future. WLF also argued that there is no evidence that sales of FMBs are targeted to those under 21.

Status: Victory; review denied.

STATE TAX INCENTIVES -- DORMANT COMMERCE CLAUSE. *DaimlerChrysler Corp. v. Cuno*. On May 15, 2006, the U.S. Supreme Court overturned an appeals court ruling that had struck down a state program of tax incentives for economic development. The decision was a victory for WLF, which filed a brief asking that the appeals court decision be overturned. The appeals court held that an Ohio tax incentive program violated the Constitution's "dormant" Commerce Clause because it provided benefits to companies doing business in Ohio but not to those operating outside the state. The Supreme Court did not reach the merits of the Commerce Clause issue. Rather, it held that the appeals court should never have considered the issue because the plaintiffs (Ohio taxpayers) lacked "standing" to raise it. WLF's brief had challenged the plaintiffs' standing and had also argued that the Ohio program is constitutional because it does not in any way penalize companies that choose to do business outside the state. WLF's brief was drafted with the *pro bono* assistance of J. Pat Powers, partner in the Palo Alto office of Baker & McKenzie.

Status: Victory.

ANTITRUST LIABILITY -- PATENT SETTLEMENTS. *Schering-Plough Corp. and Upsher-Smith Laboratories v. FTC*. On March 8, 2005, the U.S. Court of Appeals for the Eleventh Circuit overturned a ruling by the Federal Trade Commission that would have imposed antitrust liability on two drug companies based on the settlement of a patent dispute. WLF had filed a brief on June 9, 2004, encouraging the court to overturn the FTC's ruling. The settlement agreements (between Schering-Plough Corp., Upshur-Smith, and American Home Products) settled a dispute involving generic drug companies who wished to manufacture a drug for which Schering-Plough claimed patent rights. The FTC held that the settlement unreasonably restrained trade because the generic companies agreed to delay their entry into the market. In its brief, WLF argued that the FTC's view of patent settlements between drug companies is commercially unrealistic and counter to federal antitrust law. WLF further argued that the FTC's position would deter settlement of patent disputes. WLF also filed a brief when the matter was before the FTC.

Status: Victory. Petition for Supreme Court denied on June 26, 2006.

SECURITIES CLASS ACTIONS -- APPEAL RIGHTS. *Kircher v. Putnam Funds Trust*. On June 15, 2006, the U.S. Supreme Court held that securities-law class action defendants do not have the right to appeal from rulings that keep securities class action cases in state courts rather than federal courts. The decision was a setback for WLF, which filed a brief urging the Court to recognize such a right of appeal. The case arises under the Securities Litigation Uniform Standards Act of 1998 (SLUSA), in which Congress acted to curb abusive class action claims for securities fraud. Congress enacted SLUSA to make federal courts the exclusive venue for most securities fraud class action litigation involving nationally-traded securities. The plaintiffs here filed security class actions in Illinois state court against mutual fund companies. The defendants sought to have the cases removed to federal court as provided by SLUSA, but the federal district court ruled that it had no jurisdiction and sent the claims back to state court. While acknowledging that the decision to send the case back to state court likely was incorrect, the Supreme Court held that the decision could not be appealed. A silver lining in the Court's decision was its statements that the defendants were entitled to raise their SLUSA defenses in state court, defenses that almost surely will result in dismissal of this case. WLF drafted its brief with the *pro bono* assistance of W. Reece Bader, James A. Myers, Diana L. Weiss, and Michael C. Tu, attorneys with Orrick, Herrington & Sutcliffe LLP.

Status: Loss.

FEDERAL JURISDICTION -- BANKRUPTCY COURT. *Marshall v. Marshall*. On May 1, 2006, the Supreme Court reversed a court of appeals decision that held that the federal bankruptcy court did not have jurisdiction to hear a challenge by the bankrupt to the rights to the estate of her late husband that were in probate proceedings in state court. In *Vickie Lynn Marshall v. E. Pierce Marshall*, the petitioner (also known as Anna Nicole Smith) originally

challenged the will and trust estate plan of her late billionaire husband, J. Howard Marshall II, in a Texas probate court. The jury in that court upheld the will and ultimately rejected her claims. In the meantime, Ms. Marshall filed for personal bankruptcy in federal court in California and filed a counterclaim in that court against E. Pierce Marshall, the primary beneficiary of her late husband's estate. In those federal proceedings, she made claims similar to those pending in the probate proceeding, namely that Pierce Marshall had allegedly interfered with her expectation of an inheritance and was awarded \$88.5 million by the federal district court. The U.S. Court of Appeals for the Ninth Circuit vacated the district court ruling, finding that this was a "thinly veiled will contest," and thus the probate exception to federal jurisdiction applies. WLF argued in its brief that if the court of appeals decision were reversed, that would have a disastrous impact upon the orderly and effective administration of justice in many other lawsuits where a one court has already asserted *in rem* jurisdiction over the matter. WLF's brief was drafted with the *pro bono* assistance of Sidney P. Levinson, partner in the Los Angeles firm of Hennigan, Bennett & Dorman, LLP.

Status: Loss.

NATIONAL SECURITY -- MILITARY TRIBUNALS. *Hamdan v. Rumsfeld*. On June 29, 2006, the U.S. Supreme Court struck down the Bush Administration's plan to convene military commissions to conduct trials of al Qaeda leaders accused of war crimes. The 5-3 decision was a setback for WLF, which filed a brief urging that the plan be upheld. The Court held that while the President has the authority to convene military commissions, the commissions that the Bush Administration established were improper because they did not provide defendants with all of the procedural rights required under the Uniform Code of Military Justice (UCMJ). The Court said that if the Administration wishes to employ its proposed procedures, it will have to go to Congress and ask it to amend the UCMJ. Alternatively, the Court ruled, the Administration could conduct trials before military commissions but using the same procedural rules commonly employed in military courts martial. The Court also rejected WLF's argument that any challenge to procedures to be employed by the military commission should be deferred until after a trial has been permitted to take place. The challenge was filed by an alleged al Qaeda member who faces charges that he conspired with Osama bin Laden to murder Americans. WLF filed its briefs in the Supreme Court and lower court on behalf of itself and the Allied Educational Foundation.

Status: Loss.

REGULATORY PROCEEDINGS

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Proposed Regulations Requiring Preservation of Physical Evidence. On March 6, 2006, WLF submitted formal comments to the Chemical Safety and Hazard Investigation Board opposing proposed regulations that would require owners and operators of chemical and other companies to preserve certain physical evidence, including computer records and other information, following an accidental release of a toxic chemical or other hazardous substance into the ambient air. In addition, the proposed rule would trigger civil or criminal referral by the CSB if there is a "knowing failure to comply" with the proposed regulations. WLF argued that the CSB does not have the statutory authority to promulgate the proposed preservation of evidence rule, that the Board had failed to demonstrate that there was any need for the rule, and that the rule would allow the Board to make criminal referrals even if there was no criminal intent on the part of the company or its employees for not complying with the rule.

DEPARTMENT OF HOMELAND SECURITY

In-State Tuition for Illegal Aliens. On August 9, 2005, WLF filed a formal complaint with the U.S. Department of Homeland Security (DHS) against the State of Texas, charging that Texas is violating the civil rights of U.S. citizens who live outside the State. WLF filed a similar complaint against New York State on September 7, 2005. WLF charged that Texas and New York are violating federal law by offering in-state college tuition rates to illegal aliens who live in those states, while denying those same rates to U.S. citizens who do not live in those states. WLF called on DHS to bring appropriate enforcement action against Texas and New York, including ordering them to make refunds to students who have been charged excessive tuition. The federal statute at issue, 8 U.S.C. § 1623, was adopted in 1996 and is designed to ensure that any state that offers discounted, in-state tuition rates to illegal aliens on the basis of their residence in the state must offer the same discounted rates to *all* U.S. citizens. In 2001-02, Texas and New York adopted laws that allow illegal aliens to attend public universities at in-state rates, but they have refused to extend that same opportunity to U.S. citizens living outside the states. Similar laws have since been adopted in seven other states: California, Utah, Illinois, Washington, Oklahoma, Kansas, and New Mexico.

ENVIRONMENTAL PROTECTION AGENCY

Improper Assessment of Cancer Risks. On September 5, 2006, the Environmental Protection Agency (EPA) declined WLF's request that it reconsider its February 2006 decision to decline to hear a WLF petition to eliminate "junk science" from the process by which EPA determines whether a substance is likely to cause cancer in humans. In a petition filed pursuant to the Information Quality Act (IQA) in August 2005, WLF had argued that

EPA guidelines for determining human carcinogenicity violate the IQA because they are not based on sound science but rather on an EPA policy judgment that extreme caution should be adopted in connection with substances that pose any possible cancer risk. EPA's response asserted that because its guidelines constitute a "policy" document, they are not subject to the IQA. WLF's March 21 reconsideration petition explained why EPA policy documents are not exempt from the IQA. WLF filed its initial petition and its reconsideration request on behalf of itself and the American Council on Science and Health ("ACSH"). ACSH recently published a study, *America's War on "Carcinogens,"* that is extremely critical of EPA's guidelines for determining cancer risks. Now that EPA's decision is final, WLF is considering its litigation options.

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

Disciplinary Action Against "B Readers" Who Engage in Misconduct. On April 10, 2006, WLF filed a petition with NIOSH, urging it to take disciplinary action against "B Readers" who have acted inappropriately in connection with their analysis of x-rays of those being screened from asbestos-related disease. NIOSH is the licensing agency for all such B Readers. WLF charged that evidence being developed in pending asbestos litigation suggests that a small number of B Readers has been involved in a massive fraud in which thousands of healthy individuals have been diagnosed as suffering from asbestos and silica-related illnesses. WLF urged NIOSH to establish a program to look into these misconduct charges and to take appropriate disciplinary action. NIOSH responded in a lengthy letter dated May 30, 2006, assuring WLF that it intends to take an appropriate response and inviting WLF's continued participation in the issue.

U.S. DEPARTMENT OF STATE

Foreign Cooperation with U.S. Deportations of Aliens. WLF filed comments on March 25, 2005, with Secretary of State Condoleezza Rice asking that the State Department take significant steps - including, where necessary, the imposition of economic sanctions - with regard to foreign governments that refuse to cooperate with U.S. deportations of their nationals. WLF urged the State Department to make explicit demands upon the governments involved. Where that does not bring cooperation, WLF urged the Department to impose sanctions, including sanctions under the power granted by the Immigration and Nationality Act, to discontinue granting visas to countries that refuse to cooperate in the issuance of travel documents for purposes of repatriation of excluded aliens, and under the Immigration Act of 1990, which authorizes the Secretary of State to exclude aliens for policy purposes.

DEPARTMENT OF JUSTICE

Criminal Prosecution of Class Action Attorneys. On December 12, 2005, WLF called upon U.S. Attorney General Alberto Gonzales and the Justice Department to vigorously prosecute class action attorneys who may be involved in paying illegal secret kickbacks of attorneys' fees in some two dozen class action cases from 1984 to 2001, as alleged in a federal criminal

indictment. WLF requested that the Justice Department establish a task force similar to the Corporate Fraud Task Force established in 2002 to investigate other cases of possible plaintiff attorney misconduct. The Milberg Weiss firm and Bill Lerach have been identified as the attorneys in question but deny any wrongdoing; they claim the payments were not kickbacks but legitimate "referral fees" to their client's local attorney. In 2004, the Milberg Weiss firm split in two, with the New York law firm renamed Milberg Weiss Bershad & Schulman and the San Diego, California, firm of Lerach Coughlin Stoia Geller Rudman & Robbins, headed by William Lerach who was lead attorney in some of the cases. On May 18, 2006, the Milberg Weiss law firm, including two name partners, were indicted; however, neither Melvyn Weiss nor William Lerach were indicted. The case is pending.

Oversight of Criminal Investigations into Improper Drug Promotion. On March 24, 2005, WLF filed a petition with the U.S. Department of Justice (DOJ), urging DOJ to remove the Office of Consumer Litigation ("OCL," a branch of DOJ located within the Civil Division) from its oversight and supervisory role in criminal cases arising under the Food, Drug, and Cosmetics Act (FDCA) involving alleged improper promotion of pharmaceuticals and medical devices. WLF charged that OCL has failed in that role and has done little to develop a coherent federal government policy regarding when such criminal investigations are warranted. WLF said that OCL has simply rubber-stamped whatever criminal investigation local U.S. Attorney Offices have sought to initiate. WLF asked that the coordination role be reassigned to an office within DOJ's Criminal Division, which has far more expertise and experience in addressing the issues inherent in any criminal investigation. WLF said that it is particularly concerned about the need for effective DOJ coordination in this area because criminal investigations of promotional activities have the potential to adversely affect the nation's health care delivery system.

Prosecutions Based on Communications about Off-Label Uses of Medicines. On October 5, 2004, the Assistant Attorney General in charge of the Justice Department's Civil Division responded to WLF's request for clarification of the Department's policies regarding off-label prescribing. Off-label uses of medicines – that is, prescribing of FDA-approved medicines for conditions that the FDA has not specifically approved – is standard medical practice and is heavily relied upon in areas such as cancer treatment, AIDS treatment, and pediatrics. WLF wrote to the Department on April 16 and June 15, 2004, to express concern about federal criminal and civil investigations of communications by pharmaceutical companies regarding off-label uses, which appear to violate speech rights and harm the interests of patients and doctors. The Department's response to WLF argued that its investigations and prosecutions are consistent with free speech rights. WLF's response to the Justice Department was published in the March-April 2005 issue of *FDLI Update*, a leading industry trade journal. WLF is continuing to monitor DOJ enforcement policy in this area.

DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION

Regulation of Pain Medication Prescriptions. On November 6, 2006, WLF filed formal

comments with the Drug Enforcement Administration (DEA), urging DEA to make final its proposed rule regarding issuance of multiple prescriptions for Schedule II Controlled Substances. WLF stated that the proposed rule was an important first step in addressing a serious health care problem in this country: the underutilization of pain medication. WLF said that it understood the need for DEA to provide careful controls over potentially dangerous and addictive medications. At the same time, WLF argued, unless the need for controls is balanced with the need to provide ready access to those with a genuine medical need, health care will suffer. WLF argued that the proposed rule -- by permitting prescriptions of pain medications to be refilled under some circumstances without the need for the patient to make a separate visit to his or her doctor, thereby cutting down on medical costs -- takes a significant step toward bringing those competing interests into a proper balance.

Regulation of Pain Medication. On March 21, 2005, WLF filed formal comments with the Drug Enforcement Administration (DEA), urging that DEA regulation of pain medication not create a risk of denying needed pain medicines to terminally ill patients and chronic pain patients. In response to DEA's plan to issue new guidance regarding dispensing of controlled substances, WLF emphasized the importance of granting physicians leeway in treating *bona fide* pain patients, and stated that physicians should not be at risk of prosecution unless they distribute or prescribe controlled substances to a person outside the scope of legitimate practice. In separate comments filed the same day, WLF also expressed concern that DEA's new mandate to withhold approval for procurement of controlled substances used in the production of pain medicines should not be used by DEA to second-guess FDA approval decisions. WLF argued that DEA's role in this regard is advisory and that Congress has vested drug approval authority with FDA.

DEPARTMENT OF TRANSPORTATION NATIONAL HIGHWAY TRANSPORTATION SAFETY ADMINISTRATION

Federal Roof Strength Safety Standards Preempt State Law. On November 21, 2005, WLF filed comments with NHTSA that would extend roof safety rules to include vehicles with a gross weight of 10,000 pounds, increase the applied force for testing roof resistance to 2.5 times the weight of the unloaded vehicle from the current 1.5 factor, and replace the current headroom limit with a new requirement. WLF supported NHTSA's conclusion that its proposed safety rule would preempt state common law because such state tort rules would conflict with and frustrate's NHTSA's goals of reducing rollover crashes and the consequent injuries to the vehicles' occupants.

FEDERAL TRADE COMMISSION

Word-of-Mouth Marketing. On February 2, 2006, WLF filed with the FTC a response to a petition seeking an investigation of word-of-mouth, or "buzz," marketing programs. The petition had been filed by Commercial Alert, an activist group co-founded by Ralph Nader. Commercial Alert claimed in its petition that programs inviting consumers (without

compensation) to tell their peers about new products are deceptive if the consumers do not also disclose that they are participating in a marketing program. WLF argued in its response that such communications are not deceptive and that there is no basis for requiring the disclosures sought by Commercial Alert. On December 7, 2006, the FTC rebuffed the petition by Commercial Alert and decided not to issue any guidance as requested.

Verifying Parental Consent for Online Activity. On June 27, 2005, WLF filed comments with the FTC, urging the agency to retain its "sliding scale" approach in mandating verifiable parental consent to their children's online activities. Under the Children's Online Privacy Protection Act (COPPA), the FTC is charged with ensuring that companies not collect, use, or disclose information about children under 13 who use their Internet sites, unless the children's parents consent to such activities. In 1999, the FTC adopted its "sliding scale" rule, pursuant to which the level of required verification depends on the uses the company plans to make of information it collects. If a website operator collects personal information for its internal use only, an email signed by the parent is sufficient to establish consent; but much more elaborate verification of consent is required if the operator intends to disclose information about a child to outsiders. In its comments, WLF argued that the "sliding scale" approach has been working well and thus there is no need to impose harsher verification requirements, as some groups have urged. On March 16, 2006, the FTC decided to retain its rule.

**HEALTH AND HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL**

Investigation of Grants for Political Activities. On April 28, 2006, WLF petitioned HHS's Office of Inspector General (OIG), urging the OIG to investigate the legality and propriety of certain grants made by the National Cancer Institute (NCI) in support of political activity. The grants in question were made to a variety of anti-tobacco activist groups to support those groups' efforts to bring about changes in government tobacco control policies. WLF charged that these grants appear to violate the congressional prohibition against lobbying with appropriated funds.

**HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE AND MEDICAID SERVICES**

Proof of Citizenship for Medicaid Applicants. On July 11, 2006, WLF filed comments with CMS, urging the agency to tighten its requirements regarding the documentation that Medicaid applicants must provide to demonstrate that they are U.S. citizens (and thus eligible to receive Medicaid benefits). WLF argued that some of the guidelines adopted by CMS in this area are not as strict as Congress mandated in 2005 legislation. WLF argued that in the absence of stricter documentation requirements, Medicaid administrators could have little assurance that Medicaid program participants are actually eligible to receive benefits. WLF requested that CMS not permit administrators to waive documentation requirements for those claiming that it would be too burdensome to obtain proof-of-citizenship documents; it argued

that if documentation exists that would verify whether an applicant is a citizen, then the applicant should be required to provide the documentation.

Restrictions on Speech About Part D Plans. On April 4, 2006, WLF petitioned CMS to lift restrictions on commercial speech imposed by CMS's marketing guidelines for carriers offering Medicare prescription drug benefit plans. The guidelines prohibit carriers from making truthful and non-misleading statements comparing their plans to other plans. WLF's petition asserted that the speech restrictions are beyond the scope of CMS's authorizing regulations and violate the First Amendment rights of carriers and consumers.

CMS Guidance on "Part D" Drug Formularies. On August 19, 2005, WLF filed comments with the Centers for Medicare & Medicaid Services (CMS), the federal agency that oversees the Medicare program, asking the agency to withdraw its plan to allow the exclusion of the lung cancer drug Iressa from drug plans under the new "Part D" prescription drug benefit. WLF's comments are in response to a CMS decision to exclude Iressa from a requirement that carriers offering coverage under the new benefit program must include in their formularies "all or substantially all" cancer drugs. WLF noted that Iressa is believed to represent the best available care for many lung cancer patients in the Medicare population for whom other therapies have failed. WLF filed the comments on behalf of itself, the Abigail Alliance for Better Access to Developmental Drugs, the Lorenzen Cancer Foundation, and the Lung Cancer Alliance.

CMS Proposal On Tying Coverage To Clinical Trial Participation. WLF filed comments on June 6, 2005, with the Centers for Medicare & Medicaid Services (CMS), the agency of the U.S. Department of Health and Human Services (HHS) that operates the Medicare program, asking the agency to withdraw its proposal to tie reimbursement for selected new treatments to the patient's participation in a clinical trial or a similar evidence-gathering process. WLF argued that such requirements may restrict patients' access to needed care and that CMS has numerous alternative tools with which to spur research. WLF further argued that CMS has not justified such requirements under the Medicare statute's "reasonable and necessary" provision governing reimbursement. On July 12, 2006, CMS issued a Guidance document on this issue, and is continuing to seek public comment.

Obstacles to Medical Innovation. On August 20, 2004, WLF filed comments with HHS's newly created interdepartmental task force studying barriers to innovation in medical technology. WLF's comments - filed on behalf of itself, the Abigail Alliance for Better Access to Developmental Drugs, and the Lorenzen Cancer Foundation - argued that a number of government policies are having a profound effect on medical innovation. Among these are recent major expansions in criminal and civil liability on the part of pharmaceutical companies based on legal theories introduced on an *ad hoc* and retroactive basis by federal prosecutors. WLF argued that prosecutors do not have the expertise or responsibility to set health policy, and that such *ad hoc* expansions in liability will undermine the legal predictability that is needed by companies contemplating massive investments in new medical products. A public hearing was held and the matter remains under review.

Coverage of Cancer Drugs. On February 10, 2004, WLF filed a petition with the Centers for Medicare & Medicaid Services (CMS), the agency of the U.S. Department of Health and Human Services that operates the Medicare program, asking the agency not to terminate coverage of "off-label" uses of certain cancer drugs. The petition is in response to national coverage reviews in which CMS is considering whether to end those reimbursements. In the petition, WLF noted that off-label prescribing - that is, a physician's use of a drug for conditions other than the specific ones for which the FDA has given marketing approval - is common and important to medical practice in obstetrics, pediatrics, and AIDS treatment, as well as cancer treatment. WLF is concerned that a denial of reimbursement for cancer drugs will not only deny the treatments of choice to thousands of dying cancer patients, but will set a precedent for denying proper treatment to other patients. WLF filed its comments on behalf of itself and two patient advocacy and support organizations, the Abigail Alliance for Better Access to Developmental Drugs and the Lorenzen Cancer Foundation.

HEALTH AND HUMAN SERVICES
NATIONAL CANCER INSTITUTE

Grants for Political Activity. On May 3, 2004, WLF filed comments with the Department of Health and Human Services, asking it to review the legality and propriety of grants made by the National Cancer Institute in support of political activity. The grants funded the staff and overhead costs of reviewing and analyzing masses of litigation documents, with the objective of generating research to determine how to enlist the support of various constituencies for new regulations of tobacco and tobacco marketing. WLF argued that the grants violate the congressional prohibition against agencies financing political activity with appropriated funds.

Oral Cancer Drug Demonstration Project. On June 25, 2004, WLF filed comments with CMS regarding the agency's proposed exclusions from a congressionally mandated Medicare demonstration project. As an interim measure prior to the implementation of the new prescription drug benefit in 2006, the demonstration project is to give 50,000 patients access to oral substitutes for drugs that would otherwise be administered in a doctor's office. WLF argued that the agency should abandon its proposal to exclude off-label uses of drugs from the project, because that exclusion would harm patients' health and violate congressional intent. WLF filed the comments on behalf of itself and two patient groups, the Abigail Alliance for Better Access to Developmental Drugs and the Lorenzen Cancer Foundation.

HEALTH AND HUMAN SERVICES
FOOD AND DRUG ADMINISTRATION

Improper Regulation of Clinical Laboratories. On September 28, 2006, WLF filed a Citizen Petition with the Food and Drug Administration, calling on FDA to cease its efforts to enforce its "medical device" regulations against clinical laboratories that provide physicians with in-house developed and validated tests used to assist in making diagnoses and in developing treatment regimens. WLF's Citizen Petition asserted that FDA lacks statutory authority to regulate tests developed by laboratories for their own use and offered *only* to

health care professionals. WLF noted that clinical labs have long been subject to regulation by another federal agency – the Centers for Medicare and Medicaid Services (CMS) and its predecessors – pursuant to the Clinical Laboratory Improvement Amendments (CLIA). WLF argued that FDA enforcement efforts could undermine effective health care by crippling these labs' ability to quickly develop tests – e.g., for new or rapidly mutating infectious diseases.

“Lean” Labeling. On February 8, 2006, WLF filed comments with the FDA supporting the agency's proposal to expand the allowable nutrition information of certain small-package foods so that manufacturers can label those foods with the word “lean.” WLF argued that the proposed change would assist consumers by giving providing them with accurate and relevant information and would also expand the market for lean foods.

User Fees. On December 14, 2005, WLF filed comments with the FDA on the reauthorization of the prescription drug user fee program. Under the Prescription Drug User Fee Act (PDUFA), sponsors of new drug applications pay user fees to allow FDA to hire more scientific review staff and improve its information technology for the purpose of expediting the new drug review process. In its comments, WLF argued that because PDUFA's purpose is to accelerate the availability of safe and effective new medicines, PDUFA fees should be expended only on direct application-related costs – not on unrelated costs as FDA officials have suggested. WLF argued that the prescription drug user fee program must not evolve into an industry-specific tax to finance FDA's normal regulatory and law enforcement activities.

Labeling of Soda Containers. On December 16, 2005, WLF filed comments with the FDA urging the agency to reject a petition filed by the Center for Science in the Public Interest (CSPI), a Washington, D.C.-based activist group founded by Ralph Nader, that would require warning labels on non-diet soda cans and bottles advising consumers, among other things, that “drinking too much soft drinks may contribute to weight gain.” WLF argued that such warning labels are not mandated by law and, as a matter of public policy, are unnecessary since current labels on all beverages provide caloric content, sugar content, and other nutritional information to help consumers make informed choices.

Direct-to-Consumer Advertising of Prescription Drugs. On November 2, 2005, WLF Chief Counsel Richard Samp testified before an FDA panel in support of expanding the rights of pharmaceutical companies to engage in direct-to-consumer (DTC) advertising. Samp asserted that FDA's Division of Drug Marketing, Advertising, and Communications (DDMAC) needs to rein in its efforts to suppress advertising, and step in only when advertisements are likely to mislead consumers. When FDA announced that it would be holding hearings on November 1 and 2, its announcement suggested that FDA is considering moving in the other direction and imposing additional restrictions on advertising. Many hearing witnesses called for severely limiting drug ads, calling them inherently biased and misleading. WLF's Samp countered that DTC advertising has played a vital public health role in recent years by increasing consumer awareness of treatment options.

Denial of Public Citizen's Petition on Silicone Breast Implants. On October 11, 2005, WLF filed formal comments with FDA, urging it to deny a Citizen Petition, filed by Public Citizen and others, seeking to block FDA approval of PMAs (premarket applications) for silicone gel-filled breast implants. WLF argued that the Citizen Petition is based on a misreading of the Administrative Procedure Act (APA) and the Federal Food, Drug, and Cosmetic Act (FDCA). WLF argued that Mentor Corp. and Inamed Corp., the manufacturers seeking PMAs, have provided adequate assurances that their products are safe and effective and that (contrary to Public Citizen's contention) a demonstration of *absolute* safety is neither possible nor required under federal law. An FDA Advisory Panel heard extensive public testimony in April regarding the PMAs, including testimony from WLF urging approval. FDA issued an "approvable" letter to Mentor in July and an "approvable" letter to Inamed in September. Public Citizen's petition was a last-ditch effort to block final marketing approval for silicone breast implants manufactured by the two companies. Although FDA has not acted on the Citizen Petition, it granted final marketing approval to both Mentor and Inamed in November 2006. Public Citizen has subsequently threatened efforts to block marketing, by taking the issue either to Congress or the courts.

Emergency Approval of Medical Products. On September 6, 2005, WLF filed comments in support of FDA's issuance of guidance on emergency approval of medical products. Congress has given FDA authority to allow the use of unapproved medical products, or to authorize unapproved uses of an approved product, in response to a heightened risk of attack from biological, chemical, radiological, or nuclear weapons. While expressing its support, WLF expressed concerns regarding the preemption aspects of the proposal. WLF argued that those provisions should be clarified to establish that the preemptive effect of an emergency authorization covers labeling matters and tort liability. WLF's comments noted that the emergency powers created by Congress to protect the public health would be frustrated by assertions of state or local authority in either of these areas - either to establish contrary or supplemental labeling requirements or to impose tort liability where a manufacturer is acting in compliance with an emergency use authorization.

Restriction on Lung Cancer Drug. On July 25, 2005, WLF filed comments with the Food and Drug Administration asking the agency to withdraw or modify its order for the restrictive labeling of the lung cancer drug Iressa. WLF's comments were joined by three patient groups, the Abigail Alliance for Better Access to Developmental Drugs, the Lorenzen Cancer Foundation, and the Lung Cancer Alliance. FDA's action effectively limits the use of Iressa in the United States to the approximately 4,000 patients already being treated with it. WLF's comments argued that this limitation on the availability of Iressa is unjustified and will harm lung cancer patients in the future who have no other approved treatment options and who may benefit from this medicine. WLF previously filed comments on April 20, 2005, with the FDA opposing a petition from the Nader group Public Citizen, Inc., in which Public Citizen sought the immediate withdrawal of Iressa.

Approval of Silicone Gel-Filled Breast Implants. On March 28, 2005, WLF filed comments with FDA's Medical Devices Advisory Committee, charging that FDA is violating clearly

established rules governing administrative procedure in its handling of premarket applications (PMAs) submitted by two companies seeking permission to market silicone gel-filled breast implants. WLF stated that the Administrative Procedure Act (APA) prohibits FDA from imposing far stricter approval requirements on silicone breast implants than it has imposed on similar medical devices. FDA has indicated that it wants Mentor and Inamed (the two manufacturers) to provide long-term data regarding the health consequences of breast implant failure (particularly rupture). Both PMAs include at least three years of post-implant data on the large number of women included in Mentor's and Inamed's studies. But because only a tiny fraction of breast implants rupture within seven years, gathering the breast implant failure information requested by FDA would require at least 10 years of post-implant clinical testing. Thus, if FDA stands by its request for long-term post-implant follow-up data, Mentor and Inamed would not be able to gain approval of their PMAs for many years to come. WLF charged that the APA prohibits FDA from imposing long-term pre-approval data requirements on the silicone breast implant PMAs, given that FDA has never previously imposed such requirements on similar medical devices. WLF Chief Counsel Richard Samp later elaborated on WLF's charges during testimony given to an FDA panel on April 11, 2005.

In re Tier 1 Initial Approval. In light of the continuing failure of the FDA to allow terminally ill patients to obtain promising new drugs in a timely manner, WLF filed a Citizen Petition with the FDA on June 11, 2003, to seek faster drug availability for these patients. WLF is representing the Abigail Alliance for Better Access to Developmental Drugs, an Arlington, Va.-based group of terminally ill patients and parents of terminally ill patients who have tried and failed to obtain access to drugs that are tied up in the FDA's approval process. WLF's petition urges the adoption of a preliminary approval program, "Tier 1 Initial Approval," that would make promising new drugs available to patients with life-threatening illnesses while clinical trials and FDA reviews are underway. The petition shows in detail that such a program is within the FDA's statutory authority and does not require new legislation - contrary to past claims by FDA staff. WLF wrote to the new acting FDA commissioner on April 16, 2004, to urge prompt action on the issue. WLF's petition is still pending.

SECURITIES AND EXCHANGE COMMISSION

In re: Reports on Internal Control over Financial Reporting Under Sarbanes-Oxley. On September 18, 2006, WLF filed comments with the SEC supporting the SEC's proposal to extend the compliance deadlines for smaller public companies to provide their management's reports on internal control over financial reporting (ICFR) under Section 404. WLF further urged the Commission to develop clearer and more flexible guidance for management regarding its evaluation and assessment of ICFR, and to adopt relevant recommendations of the Commission's Advisory Committee on Smaller Public Companies. WLF requested that the Commission reduce, as much as possible, the regulatory burden of Sarbanes-Oxley on all public companies, both large and small. WLF particularly supported those recommendations which include partial or complete exemptions

for specified types of smaller public companies until satisfactory guidance has been issued by the Commission and the PCAOB.

In re: Exempting Smaller Public Companies from Section 404 of Sarbanes-Oxley. On April 3, 2006, as part of its Investor Protection Program, WLF filed formal comments with the Advisory Committee on Smaller Public Companies to the U.S. Securities and Exchange Commission (SEC). The Committee released a final draft report recommending that the SEC exempt a category of smaller public companies from some of the burdensome and costly reporting requirements of Section 404 of the controversial Sarbanes-Oxley (SOX) legislation. SOX was originally intended to require more accurate financial reporting to the SEC, but is being administered unfairly, particularly for smaller companies. In particular, WLF supported the Committee's recommendation establishing a scaled or proportional securities regulation for smaller public companies, and the corresponding relief under SOX as recommended, including allowing smaller public companies to follow the financial statements rules now followed by small business issuers.

In re: SEC Fair Funds Distributions. On January 26, 2006, WLF filed formal comments with the Securities and Exchange Commission (SEC), urging it to amend its plan for distribution of funds collected from companies that engaged in unfair stock trading practices, to ensure that all such funds are distributed only to those who were injured by such practices. WLF argued that the proposed plan was deficient under the Sarbanes-Oxley Act (which established the Fair Funds for Investors program) because it did not provide for the distribution of \$50-70 million of collected funds. WLF said it feared that unless such a provision is adopted, the SEC may decide to deposit those funds into the U.S. Treasury. The SEC has amassed a \$250 million fund as a result of settlements with NYSE specialist firms accused of using improper trading practices. WLF argued that the SEC should retain left-over funds to allow interest to be paid on losses and to ensure that any late-filed claims for damages can be covered.

In re: Complaint on Dissemination of Damaging Information Against Bayer Company. On July 13, 2004, WLF filed a complaint with the Securities and Exchange Commission (SEC) requesting that it conduct a full and thorough investigation of the facts and circumstances regarding the lawfulness of certain communications by plaintiff's attorneys designed to depress the stock price of Bayer AG, a German company that is traded on the New York Stock Exchange, in order to pressure the company to settle the product liability lawsuits against Bayer over its cholesterol drug Baycol. A noted plaintiff's attorney was quoted as boasting that, in order to pressure Bayer to settle his questionable lawsuit seeking \$550 million, he was disseminating negative information about Bayer to the media to engender damaging stories, which in turn would drive down the price of Bayer stock.

Proposed Rules on Director Nominations. On May 7, 2004, WLF filed comments with the SEC opposing the SEC's proposed rule that would require the inclusion in proxy materials of shareholder nominees for election as a director of a publicly held corporation. WLF argued that the SEC lacks statutory authority to alter corporate governance procedures which are a

matter of state law rather than federal law.

In re: Petition for Rulemaking Regarding Disclosure of Contacts Between Plaintiffs' Attorneys and Analysts. On March 24, 2003, WLF filed a formal Petition for Rulemaking with the SEC that would require plaintiffs' attorneys to give pre-notification to the SEC and the public about any contact or communication between plaintiff's attorneys and financial analysts, short-sellers, and other persons whose recommendation or trading could affect the price of the stock of a publicly traded company. WLF's petition was based on reports of trial attorneys who file class action cases urging analysts to downgrade the value of a stock, hoping that the targeted company will settle the lawsuit.

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU, U.S. DEPARTMENT OF THE TREASURY

Commercial Free Speech. On September 26, 2005, WLF filed comments with the Alcohol and Tobacco Tax and Trade Bureau (TTB) requesting the TTB to revoke its ban on truthful alcohol labeling that discloses basic information to the consumer. WLF contended that such a ban violates sound public policy and the First Amendment commercial free speech rights of the alcohol industry. In its submission, WLF argued that proposed labels on alcoholic beverages that contain so-called "Serving Facts" listing the serving size of the beverage, the number of servings per container, and the amount of alcohol per serving, benefit consumers, are in the public interest, are truthful and not misleading, and are constitutionally protected by the First Amendment. WLF's comments were filed as part of a larger rulemaking proceeding where TTB is soliciting public comments on a wide range of alcohol labeling and advertising issues.

NEW YORK OFFICE OF COURT ADMINISTRATION

Disciplinary Rules Limiting Aggressive Solicitations of Clients by Lawyers. On September 13, 2006, WLF submitted comments to the New York Office of Court Administration supporting amendments to the Disciplinary Rules of the Code of Professional Responsibility governing advertising and solicitation of clients by attorneys similar to reforms proposed by WLF in 1992 as part of WLF's nationwide campaign to curtail abusive practices by aggressive plaintiffs' lawyers. The key provisions would 1) prohibit direct solicitation of accident victims within 30 days of an accident; 2) prohibit testimonials from current clients or actors to tout the lawyer's skills; 3) require that advertising, whether printed, broadcast, or on the Internet, be clearly labeled as advertising, and that copies of those materials be filed with bar authorities and retained; and 4) require that advertising that offers a contingency "no recovery, no fee" arrangement make clear that clients remain liable for costs and expenses. The amendments became effective on November 1, 2006.

STATE BAR DISCIPLINARY AUTHORITIES

Attorney-sponsored Asbestos Screenings. WLF filed petitions with state bar authorities

during 2004 asking those authorities to probe attorney-sponsored medical screenings of workers for asbestos-related illnesses. WLF's petitions contend that such screening programs commonly generate large numbers of spurious claims, and that these programs are a key component of the asbestos litigation crisis facing U.S. companies. Courts and scholars have observed that mass screenings, arranged by plaintiffs' attorneys and carried out by screening companies and doctors who are paid by the attorneys, lead to a high proportion of "positive" findings with respect to individuals who are actually suffering from no impairment. WLF's petitions detail the evidence that there has been substantial recruitment of plaintiffs with no impairment. The petitions ask bar authorities to initiate formal investigations and to treat such recruitment as a violation of legal ethics rules concerning false evidence and misrepresentation. WLF filed petitions with the bar authorities of Illinois, Mississippi, Missouri, Texas, Washington, and West Virginia.

MICHIGAN SUPREME COURT: ASBESTOS LITIGATION REFORM

Inactive Docket Proposal. On May 26, 2006, WLF joined with over a dozen leading industry and trade organizations in urging the Michigan Supreme Court to adopt either of the two proposed administrative procedures to help alleviate the asbestos litigation crisis. The crisis is fueled by thousands of lawsuits filed by plaintiffs' attorneys for individuals who may have been exposed at one time to asbestos but are not sick, forcing companies into bankruptcy while leaving little or no funds to compensate those with significant illnesses. This submission was a follow-up to a similar filing made in 2004 requesting that the Michigan Supreme Court grant a petition filed by over 60 Michigan asbestos lawsuit defendants that would allow the sickest asbestos claimants to have their cases litigated, and placing most of the other cases where claimants have no illness on an "inactive docket." Those placed on the inactive docket could later reactivate their lawsuits if they develop an asbestos-related disease. On November 26, 2006, WLF filed an additional comment supporting the court's rule change prohibiting the "bundling" or consolidation of asbestos-related cases.

UNITED STATES SENTENCING COMMISSION

Attorney-Client Privilege. On March 29, 2006, WLF filed comments with the Sentencing Commission along with a coalition of business groups, urging the Commission to remove certain language from amendments of the Sentencing Guidelines that, if left intact, would harm the attorney-client privilege. Lawyers for companies and other organizations play a key role in helping these entities and their officials comply with the law and act in the entity's best interests. To fulfill this role, lawyers must enjoy the trust and confidence of managers and boards and must be provided with all relevant information necessary to properly represent the entity. By requiring routine waiver of the attorney-client and work product privileges, the amendment will discourage companies and other organizations from consulting with their lawyers, thereby impeding the lawyers' ability to effectively counsel compliance with the law. Last year, WLF also urged the Commission to place this issue as a top priority on its agenda for the next round of amendments. On April 5, 2006, the

Commission voted to delete the offending language from the proposed amendments.

SPECIAL PROJECTS

DDMAC Watch

In June 2005, WLF inaugurated its "DDMAC Watch" program, designed to monitor federal regulation of prescription drug advertising. WLF has determined that the Food and Drug Administration (FDA), acting through its Division of Drug Marketing, Advertising, and Communications (DDMAC), has been using letters to the pharmaceutical industry to advance questionable legal theories and request remedial actions that the agency could not require under law. Under the DDMAC Watch program, when DDMAC sends a letter to a drug company employing theories that are legally deficient or ill-advised, WLF will *immediately* send back a response letter to DDMAC identifying the specific ways in which this is so. The goal of the program is to alert the press and public to abuses occurring at DDMAC. As of December 31, 2006, WLF has responded to 35 letters from DDMAC and related agencies, including three in the fourth quarter. Those letters were sent to Eli Lilly and Co., Endo Pharmaceuticals, MedImmune Vaccines, Dutch Ophthalmic USA, Hoffman LaRoche, Inc., Abbott Laboratories, Pfizer, Inc., Actelion Pharmaceuticals US, SuperGen, Inc., Allergan, Inc., Alcon Research, Ltd., Nephryx, LLC, ISTA Pharmaceuticals, Inc., Gen Trac, Inc., Medicis Pharmaceutical Corp., Sankyo Pharma Inc., Duramed Pharmaceuticals, Inc., Biogen Idec Inc., Mayne Pharma (USA), Inc., ZLB Behring LLC, Palatin Technologies, Inc., InterMune, Inc., VaxGen Inc., Bioniche Pharma Group Ltd., Boehringer Ingelheim Pharmaceuticals, Inc., Sandoz, Inc., Wyeth Pharmaceuticals, Inc., PrimaPharm, Inc., GlaxoSmithKline, Eli Lilly and Co., Astellas Pharma US, Inc., Reliant Pharmaceuticals, Inc., Mallinckrodt Inc., Alcon, Inc., and 3M Pharmaceuticals.

On August 7, 2006, WLF issued "The Year in Review," a comprehensive report on WLF's analysis of all DDMAC letters in the preceding 12 months. The report concluded that three DDMAC "policies" discernable from DDMAC's letters violate the First Amendment and various federal statutes. WLF submitted its report to FDA as a Citizen Petition, asking that FDA abandon those policies.

Investor Protection Program

On January 21, 2003, WLF launched its new INVESTOR PROTECTION PROGRAM (IPP) by filing a complaint with the Securities and Exchange Commission (SEC). WLF's complaint is the first in a series of legal actions, expert legal studies, and public educational/advertising campaigns that the Foundation will undertake.

The goals of WLF's IPP are comprehensive: to protect the stock markets from manipulation by trial attorneys; to protect employees, consumers, pensioners, and investors from stock losses caused by abusive class action litigation practices; to encourage Congressional and regulatory oversight of the conduct of the plaintiffs' bar with members of the securities industry; and to restore investor confidence in the financial markets through regulatory and judicial reform measures.

WLF engaged in a wide variety of litigation and regulatory activities under this program, which are described in greater detail throughout this report. Among other activities, WLF (1) filed three formal complaints with the SEC and the Department of Justice, urging an investigation into the questionable circumstances of short-selling in J.C. Penney Co. stock just before a major class action lawsuit was filed involving the company; requesting an investigation into the class action lawsuit against Terayon Communication Systems, Inc. by two short-sellers of the stock; and requesting an investigation into the class action lawsuit against Bayer Company; (2) filed Freedom of Information Act (FOIA) requests seeking SEC documents regarding enforcement actions involving possible violations of insider trading regulations or other SEC rules involving trial attorneys and related SEC policies, followed up by a FOIA lawsuit against the SEC; (3) filed a formal Petition for Rulemaking requiring disclosure of contacts made by trial attorneys with stock analysts and short-sellers; (4) testified before Congress on short-selling and class actions; (5) filed comments with the SEC on hedge fund regulation and Sarbanes-Oxley; (6) filed formal objections and briefs in several class action cases, and (7) filed a brief challenging the constitutionality of the Public Company Accounting Oversight Board (PCAOB) established by Sarbanes-Oxley. In addition, WLF published several op-eds and Legal Studies publications on the topic. Further details of these and related IPP activities can be found throughout this report under the Litigation, Regulatory, Civic Communications Program, and Legal Studies Division sections. Of particular note, WLF filed suit against the SEC in 2005 for failing to disclose documents requested by WLF relating to short-selling and class action lawsuits.

Working Group To Oppose Expanded EPA Authority

WLF's "Working Group To Oppose Expanded EPA Authority" filed a formal opposition to a petition for rulemaking by the International Center for Technology Assessment (ICTA) and other activist groups seeking to compel the Environmental Protection Agency (EPA) to regulate carbon dioxide and other emissions from new motor vehicles under Section 202 of the Clean Air Act. In its 45-page response to ICTA's petition filed in 2000, the Working Group argued that EPA had no authority under Section 202 of the Clean Air Act to regulate greenhouse gas emissions from new motor vehicles or from any other source, including utilities. The Working Group also argued that even if EPA did have the authority to regulate greenhouse gas emissions, there was no sound scientific basis for doing so, and any such regulation would pose excessive and unnecessary costs on our society and economy. The Working Group's response cites numerous scientific studies debunking the petitioners' claims that there is "global warming" and that carbon dioxide emissions are the cause; in fact, carbon dioxide has only 85% of the global warming potential scientists had

previously assumed.

ICTA's petition was joined by 19 other activist groups, including Ralph Nader's Public Citizen, Friends of the Earth, and Greenpeace USA. The Working Group's response to ICTA's petition was prepared with the *pro bono* assistance of Frederick D. Palmer, then-General Manager and Chief Executive Officer of Western Fuels Association, Inc.; Peter Glaser of Shook, Hardy & Bacon, LLP of Washington, D.C.; and the late William Lash III, then-professor at George Mason University School of Law. The Working Group submitted further comments to the EPA in May 2001. On July 14, 2005, WLF scored a victory when the court of appeals rejected the lawsuit against the EPA. The case was heard by the U.S. Supreme Court on November 29, 2006.

Civic Communications Program

WLF's highly acclaimed Civic Communications Program consists of a broad-based outreach program which disseminates our free enterprise message through print and electronic media, public education advertising campaigns, and on-site seminars and briefings. WLF attorneys and *pro bono* legal experts also engage in extensive "Litigation PR" efforts in high profile cases and legal matters.

WLF continued to be active during 2006 with its publication of hard-hitting public policy op-eds in the editorial pages of the *New York Times*. The op-eds, inaugurated in 1998 and published under the headline "*In All Fairness*," address a variety of topics of interest to the business community and appear regularly in the national edition of the *New York Times*, which reaches over five million readers in 70 major markets, as well as a diverse group of thought leaders, decision makers, and the public. WLF's op-eds have been well received and have generated substantial public discussion on the particular topics selected.

Titles and summaries of the op-eds published during 2006 include:

The State of Our Union

(Activists misuse the courts to promote their agenda by obstructing homeland security measures and using junk science in novel product liability lawsuits)

Cartoons Spark Outrage

(Anti-business groups threaten frivolous lawsuits against companies for marketing beverages)

Amnesty for Honest Businessmen

(While proposals for amnesty for illegal aliens are being considered, honest businessmen are being wrongfully prosecuted for trivial regulatory infractions)

Had Enough?

(Activist courts and lawyers have hijacked democratic policymaking by obstructing national energy and security programs)

What Happened to Justice?

(Civil liberties of terror suspects are more protected than rights of honest businesses being targeted by aggressive prosecutors)

The Best of Intentions

(Donor intent is violated when charitable foundations provide funding grants to activist groups opposed to free enterprise philosophy of founding philanthropists)

Media Briefings & Educational Programs

Reaching out to journalists in the national media is critical to communicating WLF's free enterprise message. WLF uses its in-house facilities to host media briefings, which are often moderated by former U.S. Attorney General and WLF Legal Policy Advisory Board Chairman Dick Thornburgh. WLF's "Media Nosh" press conferences focus on a different, timely legal policy topic each week.

This component of the Civic Communications Program enables WLF to influence journalistic analyses of the issues and court cases and prevent activists from monopolizing the media by default. The briefings attract top reporters from high-profile electronic and print media such as *USA Today*, *National Law Journal*, *Wall Street Journal*, *New York Times*, *Washington Post*, *Business Week*, CNN, NBC News, ABC News, Voice of America, National Public Radio, C-SPAN, the major wire services, and syndicated legal reporters in the Washington, D.C., bureaus of national newspaper chains. These briefings are also webcast live and conveniently archived on WLF's website at www.wlf.org.

WLF media briefings during 2006 included the following:

Supreme Court Briefings

Previewing The 2006 U.S. Supreme Court Term

- The Honorable Dick Thornburgh, Kirkpatrick & Lockhart Nicholson Graham LLP
- Jonathan S. Franklin, Fulbright & Jaworski L.L.P.
- David B. Rivkin, Baker & Hostetler LLP

Reviewing the 2005 U.S. Supreme Court Term

- Thomas C. Goldstein, Akin, Gump, Strauss, Hauer & Feld LLP
- Andrew J. Pincus, Mayer, Brown, Rowe & Maw LLP
- Miguel A. Estrada, Gibson, Dunn & Crutcher

Panel of Legal Experts to Assess High Court at Mid-Term

- Carter G. Phillips, Sidley Austin LLP
- H. Christopher Batolomucci, Hogan & Hartson LLP
- Kevin J. Arquit, Simpson Thacher & Bartlett, LLP

Media Briefings

Self-Regulation of Advertising: Promoting Responsibility and Maintaining Commercial Speech

- Lynne J. Omlie, Distilled Spirits Council of the United States
- Joan Z. Bernstein, Bryan Cave LLP
- Lee E. Peeler, National Advertising Review Council
- Diane E. Bieri, Pharmaceutical Research and Manufacturers of America

***KSR Int'l Co. v. Teleflex Inc.*: The Supreme Court Examines the Patent "Obviousness" Standard**

- The Hon. Gerald J. Mossinghoff, Oblon, Spivak, McClellan, Maier & Neustadt, P.C.
- Thomas C. Goldstein, Akin, Gump, Hauer, Strauss & Feld LLP
- James W. Dabney, Fried, Frank, Harris, Shiver & Jacobson LLP

***Environmental Defense v. Duke Energy*: Will U.S. Supreme Court Clear the Air on "New Source Review"?**

- John C. Cruden, Deputy Assistant Attorney General, Env't. & Nat'l Resources Division, U.S. Department of Justice
- Robert M. Sussman, Partner, Latham & Watkins LLP
- Eric V. Schaeffer, Director, Environmental Integrity Project

A "Reasonable" Reaction?: Judicial Review of Criminal Sentences After *Booker v. U.S.*

- Ronald J. Tenpas, Associate Deputy Attorney General, U.S. Department of Justice
- Carmen Hernandez, President-Elect, National Association of Criminal Defense Lawyers

***WLF v. Leavitt*: How CMS Speech Restriction Policy Harms Medicare Drug Beneficiaries**

- V. Thomas DeVille, DeVille Pharmacies, Inc.
- Richard A. Samp, Washington Legal Foundation

Antitrust on the Docket: Renewed High Court Interest Reflect Flawed Federal Court Approach?

- John Thorne, Verizon Communications, Inc.
- A. Douglas Melamed, WilmerHale
- Roy T. Englert, Jr., Robbins, Russell, Englert, Oreseck & Untereiner, LLP

"Authorized" Generic Drugs: What Impact on Health Care Competition and Innovation?

- Michael S. Wroblewski, Federal Trade Commission
- David A. Balto, Robins, Kaplan, Miller & Ciresi L.L.P.
- Christopher J. Kelly, Mayer, Brown, Rowe & Maw LLP

FDA's Federal Preemption Policy: Implications for Drug Labeling and Product Liability Litigation

- Daniel E. Troy, Sidley Austin LLP
- Mark S. Brown, King & Spalding LLP

Scrutiny of Medical Education Grants: A Chilling Wind for Doctors and Patients?

- Jeffrey N. Gibbs, Hyman, Phelps & McNamara, P.C.
- Steven E. Irizarry, ML Strategies
- Laura Frick Laemmle, Patton Boggs LLP

Web Seminars

WLF also continued its *Web Seminar Series* this year. Web Seminars present viewers with live webcast analysis and commentary by noted legal experts on timely developments in law and public policy. These hour-long presentations are also conveniently archived and available on WLF's website. The speakers for the programs, who provide their insights on a *pro bono* basis, are leading experts in the field of law discussed.

The Foreign Corrupt Practices Act: Anticipating Government Enforcement and Managing Growing Legal Risks

- Simeon M. Kriesberg, Mayer, Brown, Rowe & Maw LLP
- Claudius O. Sokenu, Mayer, Brown, Rowe & Maw LLP

Fighting "Serial" Product Liability Litigation: Parlodel® as a Defense Case Study

- Joe G. Hollingsworth, Spriggs & Hollingsworth
- Katharine R. Latimer, Spriggs & Hollingsworth

Twenty Years of Proposition 65: Its Present and Future Impact on California and Federal Regulatory Policy

- Gene Livingston, Greenberg Traurig LLP
- Eric G. Lasker, Spriggs & Hollingsworth

An Unattractive Legal Theory: Lessons from the Successful Defense of Anti-Alcohol Advertising Class Actions

- J. Russell Jackson, Skadden, Arps, Slate, Meagher & Flom LLP

The *Rapanos* and *Carabell* Rulings: Consequences for Clean Water Act Enforcement, Regulation, and Compliance

- Sue Ellen Wooldridge, U.S. Department of Justice
- Ann Klee, Environmental Protection Agency
- Barry M. Hartman, Kirkpatrick & Lockhart Nicholson Graham LLP

Incentivizing Whistleblower Litigation: Ramifications for Health Care Contractors as False Claims Laws Spread in the States

- John T. Boese, Fried Frank Harris Shriver & Jacobson LLP
- Beth C. McClain, Fried Frank Harris Shriver & Jacobson LLP

Ten Years after *BMW v. Gore*: Punitive Damages at Trial and on Appeal

- Andrew L. Frey, Mayer, Brown, Rowe & Maw LLP
- Evan M. Tager, Mayer, Brown, Rowe & Maw LLP

Achieving Civil Justice Reform in Court: How Defendants Can Dismantle Arbitrary, Pro-Plaintiff Common Law Rules

- Victor E. Schwartz, Shook, Hardy & Bacon L.L.P.

The Class Action Fairness Act, One Year Later: Mission Accomplished?

- John Beisner, O'Melveny & Myers LLP
- Jessica Davidson Miller, O'Melveny & Myers LLP

SEC's New Civil Penalty Principles: Clearer Standards for Public Companies?

- Gregory S. Bruch, Foley & Lardner LLP
- Julie A. Smith, Foley & Lardner LLP

***Merrill Lynch v. Dabit* and Beyond: The Supreme Court Looks at Securities Fraud**

- Donald B. Verrilli, Jr., Jenner & Block LLP

SCALES

SCALES ("Stop the Collapse of America's Legal Ethics") is WLF's multi-state, multi-faceted project designed to reform the civil justice system, contain the "litigation explosion," and improve the professional and ethical standards of lawyers nationwide. SCALES represents a continuation of WLF's long-standing effort to increase accountability within the legal profession and bring the "litigation explosion" under control.

PHASE ONE: CONTINGENCY FEES. WLF's contingency fee proposal requires attorneys to provide their clients with a written Statement of Client's Rights and Lawyer's Responsibilities. The statement would inform clients that fees are negotiable and would provide a three-day cooling-off period during which clients could withdraw their authorization for representation without suffering any penalties. The WLF reform proposal would also require attorneys to set out the actual contingencies or risk of non-recovery, to disclose the use of retainer fees, to disclose the adverse risks of litigation including counter-claims and sanctions, and, at the conclusion of the litigation, to file a copy of the written fee agreement and "closing statement" with the court so that the court can exercise its supervisory powers to reduce any excessive fees. WLF filed petitions with all 50 states as well as the District of Columbia and Puerto Rico, thereby completing this phase of WLF's

SCALES project. Several states have adopted various aspects of WLF's proposals and WLF continues to follow up in the remaining states to encourage them to do likewise.

PHASE TWO: CLIENT SOLICITATION. The filing of petitions with state supreme courts or state bar associations concerning client solicitation marked the second phase of WLF's SCALES project. WLF completed this phase with petitions filed in all 50 states plus the District of Columbia. While WLF recognizes lawyers' constitutional right to advertise, WLF has been concerned that states have not been doing enough to prevent misleading attorney advertising. WLF's petitions urged the state courts and state bars to require attorneys to disclose in their advertising and solicitation materials all costs that a prospective client might incur in litigation. WLF's petitions also urge the courts and state bars to require copies of all advertisements and client solicitation materials to be filed with the state bar authorities. A filing requirement will assist courts and state bars in monitoring attorney advertising and solicitation. In June 2006, New York proposed amendments to their rules on advertising and solicitation that are similar to those proposed by WLF in 1992. WLF filed comments with New York authorities on September 13, 2006, further supporting those amendments which went into effect on November 1, 2006.

PHASE THREE: JUDICIAL CAMPAIGN CONTRIBUTIONS. The third phase of WLF's SCALES project is designed to limit campaign contributions from attorneys to judges who are elected to office. WLF filed a proposal with the Board of Governors of the State Bar of California and the California Judicial Council to reform judicial campaign contribution rules in that state. In addition to California, WLF filed similar petitions in Alabama and Texas. Lawyers in Alabama, Texas, and California gave a total of almost \$20 million to state candidates in their respective states from 1990-1994; by contrast, the Democratic National Committee gave \$12.4 million to candidates *in all 50 states*, while the Republican National Committee gave \$10.8 million. WLF was successful in persuading the Supreme Court of Texas to alter its judicial ethics rules involving the receipt of contributions. WLF will study other states to determine whether similar petitions are warranted.

PHASE FOUR: DISCLOSURE OF ATTORNEY DISCIPLINARY PROCEEDINGS. As part of its SCALES Project, WLF investigated attorney disciplinary procedures in the various states to determine whether disciplinary proceedings are sufficiently open to the public. WLF's research revealed that attorney misconduct is handled in a secretive manner to the detriment of the complaining client and the public at large. WLF filed petitions in all 50 states and the District of Columbia urging them to open the disciplinary process to the public. WLF will continue to monitor these states for any proposed revisions to their attorney disciplinary program.

PHASE FIVE: EXCESSIVE ATTORNEYS' FEES. WLF has petitioned several state Bars to require attorneys to file copies of any court decision reducing a fee award or application for being excessive or improper, so that appropriate disciplinary proceedings

against those attorneys may be instituted where warranted. WLF filed petitions with the State Bars of Florida, Alabama and Texas.

Criminalization of Free Enterprise - Business Civil Liberties Program

There continues to be a growing and dangerous trend by federal and state authorities to violate business civil liberties and criminalize honest business activities when more appropriate administrative and civil remedies are available. WLF aggressively fights for economic rights and commercial free speech, and vigorously opposes wrongful criminal prosecution of free enterprise.

WLF activities during 2006 targeted government enforcement practices by the U.S. Department of Justice, U.S. Attorneys, U.S. Sentencing Commission, State Attorneys General, and state and federal regulatory agencies. In particular, WLF vigorously opposed the Department of Justice prosecutorial guidelines that would unfairly intrude on the attorney-client privilege between counsel and corporations. WLF has been working closely with the American Bar Association, the Coalition on Attorney-Client Privilege Waiver, and other groups on criminal law reform as it affects business interests. WLF also has been critical of the U.S. Sentencing Commission's guidelines, which unfairly punishes companies for failing to comply with the myriad of complex laws and regulations. WLF was the only pro-free enterprise public interest organization to file briefs in the U.S. Sentencing Guidelines cases before the U.S. Supreme Court and lower courts opposing the misuse of the Sentencing Guidelines by federal prosecutors.

Court Watch Project

WLF's Court Watch Project involves the investigation of judges who may have acted unethically or improperly in either civil or criminal cases. When appropriate, WLF not only brings these cases to public attention, but also files complaints with judicial misconduct commissions so as to make the civil and criminal justice system more responsive to the needs of everyday citizens. To date, WLF has investigated and/or filed complaints against more than 135 state and federal judges.

SAVE Program

WLF continues to spread its pro-free enterprise message to the nation's youth through its Salvatori American Values Education (SAVE) Program. WLF's SAVE Program is designed to help educate the thousands of high school and college students who travel to Washington, D.C., every year -- in organized educational programs, as interns, and on class trips -- by stressing the values of liberty, freedom, free enterprise, and limited government espoused by the Founding Fathers.

The SAVE Program's approach is twofold. First, WLF attorneys make personal appearances at SAVE seminars to speak directly to students regarding the Founding Fathers' values and engage in question and answer sessions with the students. Second, WLF's Legal Studies Division publishes SAVE Program literature. SAVE Program appearances to date include presentations to students at events sponsored by the following groups:

- * Institute for Jewish Leadership and Values
- * Marquette University
- * Washington Workshops Foundation
- * The Washington Center for Politics and Journalism
- * Smithsonian Institution's Campus on the Mall
- * The American University Washington Semester Program
- * The Luther Institute
- * The Close-Up Foundation
- * The University of Kansas
- * The D.C. School of Law - Federalist Society
- * The American University, Washington College of Law
- * Georgetown University Law Center - Federalist Society
- * Catholic University Law School
- * National Youth Leadership Forum
- * United States Naval Academy
- * Gallaudet University
- * University of Baltimore Law School - Federalist Society
- * Hofstra University Law School
- * Tulane University School of Law
- * Oklahoma City University Law School - Federalist Society
- * Texas Tech Law School - Federalist Society
- * Duke University Law School - Federalist Society
- * Quinnipiac Law School - Federalist Society
- * George Washington University Law School - Federalist Society
- * George Mason University School of Law
- * Panim el Panim
- * Cazenovia College

Outreach Project

WLF continues to expand its nationwide network of attorneys to encourage them to engage in *pro bono* litigation activity on behalf of free enterprise and to give them an opportunity to write legal policy papers for national distribution through WLF's Legal Studies Division. During 2006, WLF received *pro bono* assistance from a number of law professors, lawyers, and law firms listed throughout this report.

Legal Studies Division Publications

WLF's Legal Studies Division published the following COUNSEL'S ADVISORIES, LEGAL OPINION LETTERS, LEGAL BACKGROUNDEES, WORKING PAPERS, CONTEMPORARY LEGAL NOTES, MONOGRAPHS, and CONVERSATIONS WITH in 2006.

COUNSEL'S ADVISORIES

Comments Sought On State Court Plan To Address Asbestos Suits

By Thomas J. Foley and Richard S. Baron, founders of the Detroit-area law firm of Foley, Baron & Metzger.

"Honest Services" Criminal Claim Dealt Setback In Appeals Court

By James B. Tucker and Amanda B. Barbour, members of the General Litigation group at Butler, Snow, O'Mara, Stevens, & Cannada PLLC in Jackson, Mississippi.

DEA Seeks Comments On Pain Medication Proposal

By Richard A. Samp, Chief Counsel to Washington Legal Foundation.

Fresh Bagels And A Schmear: A Sign Of The Times Ruling On Commercial Free Speech

By Arnold I. Friede, Senior Corporate Counsel with Pfizer, Inc.

Federal Court Rejects Class Action Waivers In Arbitration Clauses

By Donald M. Falk and Archis A. Parasharami, a partner and an associate, respectively, at the firm Mayer, Brown, Rowe & Maw LLP.

SEC Seeks Comments On Application Of "SOX" Section 404

By Damon D. Colbert is an associate in the Washington, D.C., office of the law firm Pillsbury Winthrop Shaw Pittman LLP.

Appeals Court Ruling Embraces "PMA" Device Preemption

By Michael K. Brown and Lisa M. Baird partners in the international law firm of Reed Smith LLP who specialize in litigation involving the pharmaceutical and medical device industries.

English Court Permits "Forum Shopping" In Private Antitrust Suits

By David Marks, a partner at the law firm CMS Cameron McKenna LLP.

Bilked Asbestos Plaintiffs Sue Florida Bar Association

By John Stadler, Counsel in the Boston office of the Law Firm Nixon Peabody LLP.

D.C. Court Dismisses “Attractive Advertising” Class Action Lawsuit

By **J. Russell Jackson**, a partner in the Complex Mass Torts Group of New York’s Skadden, Arps, Slate, Meagher & Flom LLP and an adjunct associate professor of law at Brooklyn Law School.

Federal Court Finds Medical Monitoring Tort Unavailable In Texas

By **Shawn D. Bryant**, an attorney with the law firm Spriggs & Hollingsworth in Washington, D.C.

European Commission Paper On “Healthy Diets” Has Implications For Food Industry

By **Sarah A. Key**, an associate in the Washington, D.C. office of Foley & Lardner LLP. She is a member of the Regulatory Department, its General Regulatory Practice Group, and the Food Industry and International Business Teams.

Supreme Court To Review Right To Automatic Injunction In Patent Cases

By **Blair M. Jacobs**, a partner with the law firm Sutherland Asbill & Brennan LLP and member of the firm’s IP Litigation Group.

Federal Court Applies Brakes To Alien Tort Statute Litigation

By **Konrad L. Cailteux**, a partner with Weil, Gotshal & Manges LLP in the firm’s New York office and **B. Keith Gibson**, an associate with the firm, also in its New York office.

FDA Preempts “Failure-To-Warn” Pharmaceutical Liability Claims

By **James Dabney Miller**, a partner in the Washington, D.C. office of the law firm King & Spalding LLP.

Comments Due On Chemical Accident Evidence Preservation Proposal

By **Jane C. Luxton**, a partner in the Washington, D.C. office of the law firm King & Spalding LLP.

LEGAL OPINION LETTERS

The First Amendment And Lawyer Blogs

By **Larry E. Ribstein**, who authors the blog *Ideoblog* and is the Mildred Van Voorhis Jones Chair in Law at the University of Illinois College of Law.

ACLU v. National Security Agency: Unwarranted Intrusion Into Wartime Decision-Making

By **Andrew C. McCarthy**, the head of the Center for Law and Counterterrorism at the Foundation For The Defense Of Democracies.

U.S. v. Kandirakis: A Bellwether Ruling On Sentencing Guidelines?

By **Brian M. Heberlig** and **Amy Lester**, a partner in the New York office and an associate in the Washington, D.C. office, respectively, at the firm Steptoe & Johnson LLP.

State Court Finds SUV's Design Not Inherently Defective

By **Joel D. Bertocchi**, a partner with the Chicago law firm Hinshaw & Culbertson LLP.

Supreme Court Revisits Constitutional Limits on Punitive Damages

By **Theodore B. Olson**, the former Solicitor General of the United States, is a partner with the law firm Gibson Dunn & Crutcher LLP where he serves as co-chair of the Appellate and Constitutional Law Practice Group and **Thomas H. Dupree, Jr.**, a partner in the firm's appellate group.

Court Rules Against Cross-Border Enforcement Of "European" Patent Rights

By **Beth Z. Shaw**, an attorney at the law firm Finnegan Henderson Farrabow Garrett & Dunner LLP.

Federal Circuit Courts Send Mixed Messages On Sentencing

By **James Flanagan**, a second year law student at the Catholic University of America Columbus School of Law and a law clerk to Washington Legal Foundation's Legal Studies Division.

Legal Storms Intensify For Lead Paint Makers

By **Charles E. Redmond II**, an International Business and Finance Bachelor of Arts candidate at the University of South Carolina, was a Fellow with Washington Legal Foundation during the summer of 2006.

Court Upholds Government's Illegal Alien Detention Authority

By **George M. Kraw**, a partner in the San Jose, California law firm Kraw & Kraw.

Washington Spyware Law Addresses Serious Online Commerce Threat

By **The Honorable Rob McKenna**, Attorney General to the State of Washington.

State Based Reforms: Making A Difference In Asbestos And Silica Cases

By **Mark A. Behrens** and **Frank Cruz-Alvarez**, a partner and an associate, respectively, from the law firm Shook, Hardy & Bacon LLP.

State Court Rules Plaintiff's Illegal Acts Bar Tort Suit

By **Margaret Oertling Cupples**, a partner at the Jackson, Mississippi office of **Bradley, Arant Rose & White**.

Applying eBay Court Rejects Injunction In Patent Case

By **Blair M. Jacobs**, a partner at Sutherland Asbill & Brennan's IP Litigation Group.

Judicial Chorus Against “Attractive Advertising” Suits Grows Louder With Ruling
By **J. Russell Jackson**, a partner in the Complex Mass Torts Group of New York’s Skadden, Arps, Slate, Meagher & Flom LLP and an adjunct associate professor of law at Brooklyn Law School.

“Inequitable Conduct” Standard For Patent Suits Is Heightened
By **Peter A. Jackman**, a director with the law firm Sterne, Kessler, Goldstein & Fox P.L.L.C.

Medical Monitoring Claim Pursued In New York State
By **Sean Wajert**, a partner at Dechert LLP.

Financial Interest Disclosures Can Protect Markets From “Short And Distort” Manipulators
By **Alex J. Pollock**, a Resident Fellow at the American Enterprise Institute.

Multiple Sclerosis Patients v. FDA Overcaution
By **Lauren Roberts**, a multiple sclerosis patient living in California.

Supreme Court Should Rule Pleading Standards For Antitrust Mega-Litigation
By **Roy T. Englert Jr.**, a founding partner of Robbins, Russell, Englert, Orseck & Untereiner LLP in Washington, D.C.

Independent Contractors: Preserving The Model Is An Economic Imperative
By **Karen Kerrigan**, President & CEO of the Small Business & Entrepreneurship Council.

U.S. Senate Considers Reforms To OSHA Law
By **Christopher J. Armstrong**, an attorney with the U.S. Office of Special Counsel.

Patents For Software Remain Viable And Vital In European Union
By **Robert D. Becker**, a partner, and **Greg T. Warder**, an associate, in the Palo Alto office of the law firm Mannatt, Phelps & Phillips, LLP.

Avoiding Disparities Between Sentences Of Co-Defendants Is A Legitimate Sentencing Goal
By **Brian M. Heberlig**, a partner in the Washington, D.C., office of Steptoe & Johnson LLP, and a member of the defense team in *United States v. Ebbers*.

Advertising And Preemption Under FDA’s New Drug Labeling Rule
By **Tish E. Paul**, a principal with Olsson, Frank and Weeda, P.C.

Don’t Dilute Drug Approval Process With Non-Scientific Criteria
By **Gilbert L. Ross, M.D.**, the Executive Director and Medical Director of the American Council on Science and Health (ACSH), a consumer education-public health organization;

and Elizabeth M. Whelan, MPH, ScD, President and founder of the American Council on Science and Health.

Quietly Expanding *Qui Tam*: Federal Law Encourages New State False Claims Acts
By John T. Boese, a partner in the Washington, D.C. office of the law firm Fried, Frank, Harris, Shriver & Jacobson LLP.

Judge Offers Frank Assessment of Lawyer-Driven Securities Suits
By Joseph De Simone, a litigation partner and Andrew J. Calica, a litigation associate in the New York office of Mayer, Brown, Rowe & Maw LLP.

Federal Court Fires A Torpedo At "Submarine" Patent Practice
By William T. Cook, an associate with Sutherland, Asbill & Brennan LLP in the firm's Atlanta office.

Congress Enacts Substantial Liability Protections For Public Health Emergencies
By John M. Clerici, a partner with the law firm McKenna Long & Aldridge LLP in its government contracts practice and government affairs group; Frank M. Rapoport, also a partner and focuses on government contracts, information technology, federal litigation and public health law; and Douglas B. Farry, a Managing Director in the firm's Government Affairs practice.

***Merrill Lynch v. Dabit*: The Supreme Court Examines Securities Fraud Preemption**
By James Edward Maloney, a partner, and Ryan D. McConnell, an associate at the law firm Baker Botts L.L.P. in the firm's Houston office.

LEGAL BACKGROUNDEERS

WTO Ruling On Biotech Foods Addresses "Precautionary Principle"
By Lawrence A. Kogan, an international business, trade, and regulatory attorney. He is CEO of the Institute for Trade, Standards and Sustainable Development, Inc.

Nanotechnology: Don't Delay Liability Risk Assessments And Solutions
By George J. Mannina, Jr., a Senior Partner at the law firm of O'Connor & Hannan, LLP, and a member of the Environmental Practice Group at the Firm.

***Bell Atlantic v. Twombly*: High Court Should Reverse In Antitrust Class Action**
By Christine C. Wilson and Adam J. Coates, a partner and an associate, respectively, at the law firm O'Melveny & Myers LLP in its Washington, D.C. office.

Rulings Slowly Reveal Impact Of California's Proposition 64
By Ross H. Hyslop, a partner with the law firm McKenna Long & Aldridge LLP in its San Diego office.

Climate Change & Insurance: Sweeping Regulations Are Not The Answer
By Debra T. Ballen, the Executive Vice President, Public Policy Management and Corporate Secretary to the American Insurance Association.

Progressive Liability Reform Law Faces Repeal Effort In Michigan
By Thomas J. Foley and Kim J. Sveska, a founder and a principal, respectively, at the firm Foley, Baron & Metzger.

A Priority For The FDA: Fix The "Warning Letter" Process
By Larry R. Pilot, a partner with the law firm McKenna Long & Aldridge LLP in its Washington, D.C. office.

Alcohol Advertising: Federal And State Regulators Should Tread Lightly
By David Versfelt, a partner with the law firm Kirkpatrick & Lockhart Nicholson Graham LLP and Adonis Hoffman, Senior Vice President and Counsel with the American Association of Advertising Agencies.

Legal Reform Inches Along In Illinois
By Edward D. Murnane, President of the Illinois Civil Justice League.

Separation Of Powers, ABA Style: "Signing Statements" Report At Odds With Constitution
By Timothy E. Flanigan, a Senior Vice President and Deputy General Counsel at Tyco International, and David B. Rivkin, Jr. and Lee A. Casey, partners in the Washington D.C. office of the law firm Baker & Hostetler LLP.

Court Refuses To Enforce Discovery Subpoena Against E-Mail Service Provider
By Jeffrey D. Neuburger, a partner in the New York office of Brown Raysman Millstein Felder & Steiner LLP and is the Chair of the firm's Technology, Media and Communications Practice Group; and Maureen E. Garde, an associate at the firm and member of that practice group.

"Waters of the U.S.": Definition Remains In Doubt After Supreme Court Ruling
By George J. Mannina, Jr., a Senior Partner at the law firm of O'Connor & Hannan, LLP and a member of the Environmental Practice Group at the Firm.

How Bad Is Bad? Courts Remain Split On Key Punitive Damages Issue
By David T. Biderman, a partner with the law firm Perkins Coie LLP in the firm's Santa Monica office and Gabriel Liao, an associate in the firm's Los Angeles office.

Drug Price Control Fails Constitutional Test
By Grant P. Bagley and Rosemary Maxwell, members of the healthcare and pharmaceutical regulatory practice in the Washington D.C. office of the law firm Arnold & Porter LLP.

Victory In Tuna Trial Significant For All Proposition 65 Defendants

By Ann G. Grimaldi, a partner at McKenna Long & Aldridge LLP in its San Francisco office.

CMS Information Policy Under Medicare "Part D" Creates 1st Amendment Problems

By Ronald D. Rotunda, a professor of law at the George Mason University School of Law.

Ruling Criticizing Prop 65 Is Mixed Blessing For Defendants

By Lisa L. Halko, an associate with the law firm Greenberg Traurig, LLP in its Sacramento office.

Risks And Rewards Of Waiving The Attorney-Client Privilege

By Joel B. Harris, a partner, and Andrew I. Stemmer, a former associate, in the Litigation and Dispute Resolution Department of the law firm Thacher Proffitt & Wood LLP.

Europe's REACH Initiative Will Impact Trade Secrets

By Jeroen H. J. den Hartog and Mark G. Paulson, an attorney at the Brussell office and a partner at the Washington, D.C., office, respectively, of the law firm Mayer, Brown, Rowe, & Maw LLP.

Abusing Independent Contractors Imperils Vital Business Model

By Richard A. Samp, Chief Counsel to the Washington Legal Foundation.

Activist Suits Challenging Terrorist Surveillance Should Be Dismissed

By Andrew C. McCarthy, the head of the Center for Law and Counterterrorism at the Foundation for the Defense of Democracies.

Is Revision Of The PM_{2.5} NAAQS Requisite To Protect Public Health?

By F. William Brownell and Lucinda Minton Langworthy, a partner and Counsel, respectively, to the law firm Hunton & Williams in its Washington, D.C., office.

USG Settlement Reflects Sorry State Of Asbestos Bankruptcies

By Mark D. Taylor, a partner in the Financial Restructuring and Bankruptcy practice of Arent Fox PLLC where he represents debtors, Chapter 11 Trustees, and committees in asbestos related or other mass tort bankruptcies; and Brandi A. Richardson, an associate in the General Litigation and Government Relations practices of Arent Fox PLLC.

Organizing A Successful Corporate Internal Investigation

By The Honorable Dick Thornburgh, Of Counsel to the law firm Kirkpatrick & Lockhart Nicholson Graham LLP.

Health And Speech Rights At Risk From Attacks On Medical Education

By **Jeffrey N. Gibbs**, a principal with the law firm Hyman, Phelps & McNamara, P.C. in its Washington, D.C., office.

Holding Battlefield Contractors Accountable: Federal "Removal" Protects Federal Interests

By **David C. Hammond**, a partner in the law firm of Crowell & Moring LLP specializing in government contract law.

Federal Court Draws Roadmap For Scrutiny of Attorneys' Fees in "Coupon" Settlements

By **Thomas M. Smith**, Counsel at McCarter & English, LLP, in the firm's New York office, and **Natalie S. Watson**, an associate at McCarter & English, LLP, in the firm's Newark, New Jersey office.

Medicines And The Environment: Legal And Regulatory Storms Ahead?

By **George J. Mannina, Jr.**, a Senior Partner at the law firm of O'Connor & Hannan, LLP and a member of the Environmental Practice Group at the firm.

State High Court Condemns Arbitration Provisions That Don't Allow Class Actions

By **Donald M. Falk**, a partner in the Supreme Court and Appellate Practice Group of the law firm Mayer Brown Rowe & Maw LLP, resident in the Palo Alto office, and **Archis A. Parasharami**, an associate in the firm's Washington, D.C. office.

Federal And State Courts Reject "Attractive Advertising" Claims

By **J. Russell Jackson**, a partner in the Complex Mass Torts Group of New York's Skadden, Arps, Slate, Meagher & Flom LLP and an adjunct associate professor of law at Brooklyn Law School.

Impending Legal Attacks On Food Ads Should Not Be Welcome In Court

By **Scott A. Elder**, a partner, and **Anna Aven Sumner**, an associate, with Alston & Bird LLP in the firm's Atlanta office.

Plaintiffs, Lawyers, And Short-Sellers: The Legal Status of "Dump & Sue"

By **Professor Moin A. Yahya**, an assistant Professor of Law at the University of Alberta.

Federal Privilege Waiver Demands Impact Corporate Compliance

By **Richard Ben-Veniste**, a senior partner in the Washington, D.C. office of the law firm Mayer, Brown, Rowe & Maw LLP, specializing in white collar defense and civil litigation. Mr. Ben-Veniste formerly served as Chief of the Special Prosecutions Section of the U.S. Attorney's Office for the Southern District of New York, and was a member of the National Commission on Terrorist Attacks Upon the United States ("9/11 Commission"); and **Raj De**, an associate with the firm, and former counsel to the 9/11 Commission.

Regulated Industries Benefit From Illinois Consumer Protection Ruling

By Victor E. Schwartz, a partner in the law firm of Shook, Hardy & Bacon L.L.P. in Washington D.C. and Cary Silverman, an associate with the firm.

Court's Ruling Applying Credit Act To Insurers Legally Unsupportable

By Robert Detlefsen, Director of Public Policy at the National Association of Mutual Insurance Companies.

Misaddressed Reform: The U.S. Postal Service's New Procurement Guidelines

By David P. Hendel, a Shareholder with the law firm Wickwire Gavin PC in Vienna, Virginia. He concentrates his government contracts practice on Postal Service Procurements.

Courts Deny Plaintiff's Lawyers A Role In Enforcing Sarbanes-Oxley Section 304

By Peter L. Welsh, an associate in the Boston office of the law firm Ropes & Gray LLP. Mr. Welsh practices in the areas of securities litigation, director and officer litigation and representation, and corporate governance.

High Court Hears Key Case On Antitrust And Joint Ventures

By William Kolasky, a partner, and Steven Lehotsky, an associate at Wilmer Cutler Pickering Hale and Dorr LLP, in the firm's Washington and Boston offices, respectively. Mr. Kolasky was previously Deputy Assistant Attorney General for International Enforcement in the Antitrust Division of the U.S. Department of Justice.

WORKING PAPERS

Results-Oriented Class Certification: *Schwab v. Philip Morris*

By Brian C. Anderson, a partner in the Washington, D.C. office of O'Melveny & Myers LLP and Andrew J. Trask, a Counsel to the firm.

Beyond The "Yuck Factor": Product Liability Implications Of Medical Device Reprocessing

By Peter J. Goss, a partner in the Minneapolis office of the law firm Faegre & Benson LLP.

Sovereign Debt Default: Cry For The United States, Not Argentina

By Professor Hal S. Scott, Nomura Professor of Law at Harvard Law School and Director of its Program on International Financial Systems.

New False Claims Law Incentives Pose Risks To Contractors And States

By John T. Boese and Beth C. McClain, a partner and a special counsel, respectively, to the law firm Fried, Frank, Harris, Shriver & Jacobson LLP in its Washington, D.C. office.

An Exaggerated And Ill-Conceived Sense Of Risk: The Ephemeral Nature Of California's Proposition 65

By **Thomas H. Clarke, Jr.**, a senior partner with Ropers, Majeski, Kohn, & Bentley in their San Francisco office.

New False Claims Law Incentives Pose Risks To Contractors And States

By **John T. Boese** and **Beth C. McClain**, a partner and a special counsel, respectively, to the law firm Fried, Frank, Harris, Shriver & Jacobson LLP in its Washington, D.C., office.

Foreign Governments' Misuse of Federal RICO: The Case For Reform

By **Ignacio Sanchez** and **Kevin O'Scannlain**, a partner and a Counsel, respectively to the law firm DLA Piper Rudnick Gray Cary US LLP in its Washington, D.C., office.

Medical Monitoring: Innovative New Remedy Or Money For Nothing?

By **Steven J. Boranian**, a partner in Reed Smith LLP's San Francisco office, and **Kevin M. Hara**, a litigation associate in the firm's Oakland office.

CONTEMPORARY LEGAL NOTES

Removing Lawsuits From State Court: The "Federal Officer" Option

By **Katharine R. Latimer** and **Michael L. Junk**, a partner and an associate, respectively, with the Washington, D.C. law firm Spriggs & Hollingsworth.

New E-Discovery Rules & The Attorney-Client Privilege: A Middle Ground For Waiver?

By **Julie Anne Halter**, a partner in the law firm Preston Gates & Ellis LLP in Seattle, Washington.

The SAFETY Act: A Vital Tool In The Fight Against Terrorism

By **Joe Whitley** and **George Koenig**, members of Alston & Bird LLP's Global Security & Enforcement Practice Team, and **Parney Albright**, Managing Director with the Civitas Group LLC.

Attorney-Client Privilege & Employee Interviews In Internal Investigations

By **Paul B. Murphy**, a partner with King & Spalding LLP's Special Matters and Government Investigations Group who previously served as the United States Attorney for the Southern District of Georgia, and **Lucian E. Dervan**, an associate with King & Spalding's Special Matters and Government Investigations Group.

Asserting Counterclaims And Third Party Claims In False Claims Act Litigation

By **Ronald H. Clark**, a partner in the Washington, D.C. office of Arent Fox PLLC. Mr. Clark specializes in False Claims Act litigation, consulting, and expert testimony.

Securities Act Section 11: A Primer And Update Of Recent Trends

By **Richard A. Spehr** and **Joseph De Simone**, litigation partners, and **Andrew J. Calica**, a litigation associate, in the New York office of the law firm Mayer, Brown, Rowe & Maw LLP.

CONVERSATIONS WITH

CONVERSATIONS WITH: U.S. And International Anti-Corruption Efforts

Features **The Honorable Dick Thornburgh**, Of Counsel to the law firm Kirkpatrick & Lockhart Nicholson Graham LLP moderating a discussion with **Paul A. Volcker**, former Chairman of the Federal Reserve, and Miller & Chevalier Member **Homer E. Moyer, Jr.**

MONOGRAPHS

Foreign Corrupt Practices Act Enforcement After *U.S. v. Kay*

By **Hector Gonzalez**, a litigation partner in the New York office of the law firm Mayer, Brown, Rowe & Maw LLP, and **Claudius O. Sokenu**, a senior associate with the firm. Foreword by **The Honorable Dick Thornburgh**, counsel to the law firm Kirkpatrick & Lockhart Nicholson Graham LLP and former Attorney General of the United States. Introduction by **Kenneth R. Cunningham**, Senior Counsel to Grant Thornton LLP's Risk, Regulatory, and Legal Affairs group.

Ideology Masked As Scientific Truth: The Debate About Children And Advertising

By **Dr. John C. Luik**, a public and science policy researcher who is a Senior Fellow with the Democracy Institute. Foreword by **Professor Todd J. Zywicki** of the George Mason University School of Law.

Waiver Of The Attorney-Client Privilege: A Balanced Approach

By **The Honorable Dick Thornburgh**, Of Counsel to the law firm Kirkpatrick & Lockhart Nicholson Graham LLP. Foreword by **The Honorable John Engler**, President and CEO of the National Association of Manufacturers. Introduction by **Laura Stein**, Senior Vice President - General Counsel and Secretary, The Clorox Company.

PUBLIC APPEARANCES

WLF attorneys are regularly quoted or featured by the print media in numerous news and trade publications. Highlights of public, television, and radio appearances made by WLF attorneys during 2006 include:

- * February 28, 2006, WLF Senior Executive Counsel Paul Kamenar appeared on Court TV to discuss the legal issues involved in the Supreme Court case, *Marshall v. Marshall*, regarding federal jurisdiction over probate and other state law claims.
- * March 27, WLF Chief Counsel Richard Samp participated in a debate, sponsored by the Cato Institute, against Charles Swift, the military attorney for Salim

Hamdan, who faces a war crimes trial for his work as an aide to Osama bin Laden. Hamdan's challenge to the military tribunal process is currently before the Supreme Court. The debate, which was broadcast on C-SPAN, addressed whether the President has the authority to establish military tribunals to try war crimes suspects.

- * March 29, Kamenar discussed the role of the Supreme Court and key Court cases before a group of 300 high school students visiting Washington, D.C., sponsored by the Close-Up Foundation.
- * March 30, Samp was a featured panelist at the Medical Device Regulatory and Compliance Congress held at Harvard University. Samp discussed manufacturers' First Amendment rights to speak truthfully about FDA-approved medical products.
- * May 11, Kamenar was a featured speaker before 200 high school students from across the country sponsored by the Close-Up Foundation. Kamenar discussed the judiciary and Supreme Court cases.
- * May 16, Samp was a featured speaker at the annual conference of the ALS Association, a patient advocacy group that promotes improved treatment and medical research for those suffering from ALS. Samp discussed WLF's recent victory in *Abigail Alliance v. von Eschenbach*, a federal appeals court decision that established that terminally ill patients have a constitutional right to access to experimental, potentially life-saving medications.
- * June 6, Samp was a featured speaker on a teleconference sponsored by Mealey's, regarding FDA's recently announced policy regarding federal preemption of state-law failure-to-warn tort suits against pharmaceutical manufacturers and health practitioners.
- * June 8, Kamenar was a featured speaker at the inaugural summer speakers program of Rutgers College in Washington for both alumni and undergraduate summer interns. Kamenar discussed WLF's litigation practice and was joined by Tony Mauro, Supreme Court reporter for Legal Times. Both Kamenar and Mauro are Rutgers alumni.
- * June 21, Samp was interviewed on National Public Radio's nationally syndicated "Fresh Air" program, regarding the propriety of continued detention of "enemy combatants" at Guantanamo Bay, Cuba.
- * June 29, Samp was interviewed regarding the Supreme Court's decision in *Hamdan v. Rumsfeld* (which struck down the Bush Administration's plan to try

alleged al Qaeda war criminals before military tribunals) by Fox News, ABC-Radio, CBS-Radio, NPR's "To the Point," and Court TV.

- * July 5, Samp was interviewed on Voice of America regarding the Supreme Court's decision in *Hamdan v. Rumsfeld* (which struck down the Bush Administration's plan to try alleged al Qaeda war criminals before military tribunals).
- * September 30, WLF Legal Studies Division Chief Counsel Glenn Lammi was interviewed for CNBC's preview of the U.S. Supreme Court term, which focused on free enterprise cases.
- * November 27, Samp was interviewed by the Lou Dobbs Show on CNN regarding enactment by cities across the country (including Hazelton, Pennsylvania) of laws designed to crack down on illegal immigrants.
- * October 5, Samp was interviewed by the Regional News Network (a network of numerous radio stations) regarding the U.S. Supreme Court's 2006-2007 term.
- * October 3, Samp participated in an on-air debate on National Public Radio's "On Point" program, on Bush Administration policy regarding detention of enemy combatants at Guantanamo Bay, Cuba.

ACTIVITIES REPORT

to the

**WASHINGTON LEGAL FOUNDATION
BOARD OF TRUSTEES**

**SUPPORTING
PATIENTS' RIGHTS AND
IMPROVED HEALTH CARE**

July 7, 2006

TABLE OF CONTENTS

INTRODUCTION 1

I. LITIGATION AND ADMINISTRATIVE PROCEEDINGS 1

A. Protecting the First Amendment 2

B. Excessive FDA Caution 9

C. Opposing Interference with the Free Market 12

D. Exposing FDA Misconduct 16

E. Opposing Unwarranted Tort Suits 17

F. Preemption of Medical Device Suits 23

G. Protecting Patent Rights 25

H. Misuse of Antitrust Law 28

II. CIVIC COMMUNICATION 30

A. Media Briefings 30

B. Web Seminars 32

C. Advocacy Ads 33

D. Public Appearances 34

III. PUBLICATIONS 39

JULY 7, 2006

**ACTIVITIES REPORT TO THE
WASHINGTON LEGAL FOUNDATION
BOARD OF TRUSTEES**

**SUPPORTING PATIENTS'
RIGHTS AND IMPROVED HEALTH CARE**

The ideals upon which America was founded -- individual freedom, limited government, a free-market economy, and national security -- are the same principles that the Washington Legal Foundation (WLF) defends in the public interest arena. Adherence to those principles is essential to maintaining America's position as the possessor of the finest health care system in the world.

Throughout its 29 years, the Washington Legal Foundation (WLF) has devoted a significant portion of its resources to improving the health care available to all Americans. WLF believes that goal can best be achieved through free market solutions: providing consumers with the widest range of choices in health care, assisting them in making those choices by giving them access to all relevant information, providing private industry with the incentives to engage in vigorous research and development, and ensuring that health care is not stifled by excessive litigation.

WLF has worked to achieve those objectives through its precedent-setting litigation, its involvement in government regulatory proceedings, its publication of timely articles on health-related issues, and its tireless advocacy for free-market solutions in the news media and other public forums. This report highlights some of the of more significant WLF health-related activities over the past decade.

I. LITIGATION AND REGULATORY PROCEEDINGS

Litigation is the backbone of WLF's public interest programs. The Foundation litigates across the country before state and federal courts and administrative agencies. WLF represents only those who are otherwise unable to retain counsel on their own. Its clients have included numerous patients and patient-advocacy groups who have turned to WLF for assistance when government bureaucrats denied them adequate health care and access to health-care information.

A. Protecting the First Amendment

Some bureaucrats argue that health care decisions should be dictated by providers and government officials because most consumers cannot begin to understand treatment issues. WLF takes the opposite approach. It believes that providing consumers with unlimited access to accurate medical information vastly improves health care delivery. Accordingly, WLF has worked tirelessly over the past decade to eliminate government restrictions on dissemination of truthful medical information. WLF has worked to lift advertising restrictions, regulations that prevent dissemination of information on off-label uses of FDA-approved products, overly strict rules governing product labeling, and rules that limit discussions at Continuing Medical Education (CME) events.

Washington Legal Foundation v. Henney. On February 11, 2000, the U.S. Court of Appeals for the District of Columbia Circuit dismissed FDA's appeal from a district court decision that struck down FDA regulations that severely restricted the flow of truthful information regarding off-label uses of FDA-approved drugs and medical devices. The decision was a major victory for WLF in its long-running battle against FDA speech restrictions; WLF had filed suit against FDA in 1994, after FDA rejected a 1993 WLF Citizen Petition that asked that the regulations be lifted. In 1998 and 1999, the district court ruled that the regulations violated the First Amendment rights of consumers who wished to learn truthful information about off-label product uses that are widely accepted within the medical community as safe and effective. As a result of WLF's victory, FDA has not initiated enforcement actions against any of the manufacturers who have exercised their First Amendment rights by distributing peer-reviewed journal articles that discuss off-label uses of their products.

"DDMAC Watch." In June 2005, WLF inaugurated its "DDMAC Watch" program, designed to monitor federal regulation of prescription drug advertising. WLF has determined that the Food and Drug Administration (FDA), acting through its Division of Drug Marketing, Advertising, and Communications (DDMAC), has been using letters to industry to advance questionable legal theories and request remedial actions that the agency could not require under law. Under the DDMAC Watch program, when DDMAC sends a letter to a drug company employing theories that are legally deficient or ill-advised, WLF will *immediately* send back a response letter to DDMAC identifying the specific ways in which this is so. The goal of the program is to alert the press and public to abuses occurring at DDMAC. As of June 2006, WLF has responded to 26 letters from DDMAC and related agencies. Those letters were sent to Eli Lilly and Co., Endo Pharmaceuticals, MedImmune Vaccines, Dutch Ophthalmic USA, Hoffman LaRoche, Abbott Laboratories, Pfizer, Pharmaceuticals US, SuperGen, Allergan, Alcon Research, NephRx, ISTA Pharmaceuticals, GenTrac, Medicis Pharmaceuticals, Sankyo Pharma, Duramed Pharmaceuticals, Biogen Idec, Mayne Pharma (USA), ZLB Behring, Palatin Technologies, InterMune, VaxGen, Bioniche Pharma Group, Sandoz, BIPI, and Wyeth Pharmaceuticals.

Physician Comm. for Responsible Medicine v. General Mills. On September 2, 2005, WLF filed a brief in the U.S. District Court for the Eastern District of Virginia, urging the court to dismiss a lawsuit by animal rights activists who are seeking to stop advertisements being run by the milk industry. WLF argued that the suit threatens to undermine manufacturers' commercial speech rights. WLF argued that if a manufacturer can be subjected to expensive lawsuits filed by

activists who do not like statements the manufacturer makes on issues of public importance, then significant amounts of truthful speech will be chilled as manufacturers become increasingly unwilling to comment on such issues. The suit targets a recent milk industry advertising campaign that advocates increased consumption of dairy products as a method of losing weight. The Physicians Committee for Responsible Medicine (PCRM) challenges the validity of the scientific studies that form the basis for the industry's advertising. PCRM argues that the weight-loss claim is false and violates Virginia's consumer protection and false advertising laws. Their principal request is that the court issue an injunction against any further promotion of the weight-loss claims. WLF argued that Virginia law does not permit individuals to obtain injunctions against speech. WLF also argued that such suits raise serious First Amendment issues because of their potential to chill truthful speech on issues of public importance, such as whether increases in consumption of dairy products are good for one's health.

Preserving Direct-to-Consumer Advertising of Prescription Drugs. On November 2, 2005, WLF Chief Counsel Richard Samp testified before an FDA panel in support of expanding the rights of pharmaceutical companies to engage in direct-to-consumer (DTC) advertising. Samp asserted that FDA's Division of Drug Marketing, Advertising, and Communications (DDMAC) needs to rein in its efforts to suppress advertising, and step in only when advertisements are likely to mislead consumers. When FDA announced that it would be holding hearings on November 1 and 2, 2005, its announcement suggested that FDA is considering moving in the other direction and imposing additional restrictions on advertising. Many hearing witnesses called for severely limiting drug ads, calling them inherently biased and misleading. WLF's Samp countered that DTC advertising has played a vital public health role in recent years by increasing consumer awareness of treatment options.

Fullerton v. Florida Medical Association. On June 20, 2005, WLF filed a brief in Florida state court, asking the court to rule that a federal statute (the Health Care Quality Improvement Act of 1986) protects participants in peer review of medical testimony from liability for money damages. The lawsuit, a defamation action, was brought by a physician who had given expert testimony in a medical malpractice case. The physician brought the lawsuit in response to a complaint filed against him with the Florida Medical Association alleging that his testimony in the malpractice case was false and financially-motivated. WLF entered the case in the trial court because the lawsuit presents an important legal issue regarding peer review of expert testimony. Improper expert testimony is a concern of the business community, particularly in asbestos litigation, where studies have indicated that most claims of asbestos-related diseases are backed by unfounded "expert" interpretations of screening X-rays. WLF also filed a brief in the case in September 2004. The court heard oral arguments in the case on May 31, 2006.

Oversight of Criminal Investigations into Improper Drug Promotion. On March 24, 2005, WLF filed a petition with the U.S. Department of Justice (DOJ), urging DOJ to remove the Office of Consumer Litigation ("OCL," a branch of DOJ located within the Civil Division) from its oversight and supervisory role in criminal cases arising under the Food, Drug, and Cosmetics Act (FDCA) involving alleged improper promotion of pharmaceuticals and medical devices. WLF charged that OCL has failed in that role and has done little to develop a coherent federal government policy regarding when such criminal investigations are warranted. WLF said that OCL has simply rubber-stamped whatever criminal investigation local U.S. Attorney Offices have

sought to initiate. WLF asked that the coordination role be reassigned to an office within DOJ's Criminal Division, which has far more expertise and experience in addressing the issues inherent in any criminal investigation. WLF said that it is particularly concerned about the need for effective DOJ coordination in this area because criminal investigations of promotional activities have the potential to adversely affect the nation's health care delivery system.

In re: ACCME Restrictions on Continuing Medical Education. On January 29, 2003, WLF filed comments with the Accreditation Council for Continuing Medical Education (ACCME), severely criticizing the ACCME for its proposal to impose draconian restrictions on who may speak at CME activities. WLF argued that the proposed restrictions are an unwarranted infringement on free speech rights. Current ACCME standards are designed to ensure unbiased CME presentations by, among other things, requiring speakers to disclose whether they have received any funding from the manufacturer of any of the drugs being discussed. The proposed standards go considerably further; they would altogether prohibit doctors who have been compensated by a pharmaceutical company from speaking at a CME activity. WLF noted in its comments that most of the top medical authorities in the country are employed in some capacity by one or more of the country's drug companies and thus would no longer be permitted to participate in CME events. Without the participation of top doctors, CME would no longer be the important source of new medical information that it is today, WLF argued. WLF attorneys repeated their criticisms of the proposed restrictions at several well-attended ACCME-related forums in 2003. The revised ACCME rules became final and took effect in late 2004. While not as objectionable as earlier drafts, the final rules continue to be a significant obstacle to the open dissemination of truthful speech. WLF continues to speak out against the rules and is considering all options for additional response.

"Lean" Labeling. On February 8, 2006, WLF filed comments with FDA supporting the agency's proposal to expand the allowable nutrition information of certain small-package foods so that manufacturers can label those foods with the word "lean." WLF argued that the proposed change would assist consumers by providing them with accurate and relevant information and would also expand the market for lean foods.

In re: FDA Request for Comments on First Amendment Issues. FDA has lost several major First Amendment lawsuits in recent years, including *WLF v. Henney*. FDA responded in 2002 by requesting public input on whether any current FDA policies violate the First Amendment. On September 13, 2002, WLF filed extensive comments, citing a broad array of FDA regulatory activities that violate the First Amendment rights of those seeking to speak truthfully about pharmaceutical products. On October 28, 2002, WLF filed a second round of comments, responding to arguments (made by several U.S. Senators in connection with the initial round of comments) that public health concerns justify exempting FDA from First Amendment constraints applicable to other government entities. WLF criticized the contention of those Senators that consumers are likely to misuse truthful information. FDA has pledged to address these First Amendment concerns but to date has established no timetable for doing so.

Citizen Petition Regarding Restrictions on Truthful Speech. Following WLF's victory in *WLF v. Henney* (see above), FDA began to suggest that it was not bound by the court's decision in WLF's favor. FDA issued statements to manufacturers, suggesting that they might be

sanctioned for engaging in the types of off-label speech that *WLF v. Henney* had held to be constitutionally protected. Accordingly, on May 23, 2001, WLF filed a Citizen Petition with FDA, urging the agency to repudiate those statements and to announce that it had lifted restrictions on manufacturers' rights to disseminate non-misleading information concerning off-label uses of FDA-approved products. WLF argued that by raising the threat of enforcement action against manufacturers that exercise their free-speech rights, FDA was violating the First Amendment rights of manufacturers who wish to speak in a non-misleading manner about off-label uses of their products, and of those who wish to hear such speech. WLF noted that *WLF v. Henney* had resulted in a ruling that the First Amendment prohibits FDA from restricting manufacturer dissemination of "enduring materials" (medical texts and reprints of peer-reviewed medical journal articles) that discuss off-label uses of FDA-approved products. WLF charged that FDA was flouting that ruling by threatening enforcement action against manufacturers who disseminate enduring materials. FDA's response to the petition amounted to another WLF victory. Although continuing to argue that the ruling in *WLF v. Henney* was not as broad as WLF asserted, FDA pledged that in the future (in light of its limited resources) it would not bring enforcement actions based on the types of manufacturer speech described by WLF.

Nike, Inc. v. Kasky. On June 26, 2003, the U.S. Supreme Court decided not to review a California decision that threatens to impose severe restrictions on the right of corporations to speak freely on matter of public importance – including drug companies seeking to speak truthfully about off-label uses of their products. The Court in January 2003 agreed to review the case but five months later changed its mind and dismissed as "improvidently granted" its original order granting review. In two separate briefs filed in the case, WLF argued that the California court effectively held that *all* corporate speech – even speech on matters of great public importance – is entitled to reduced levels of First Amendment protection. WLF argued that the decision is contrary to a long line of Supreme Court decisions and threatens to chill significant amounts of speech by corporations.

Investigating Efforts to Evade WLF Courtroom Victory. Although WLF established in *WLF v. Henney* (see above) that the First Amendment protects the right of drug manufacturers, in certain instances, to disseminate truthful information about off-label uses of their products, WLF has become increasingly concerned that various federal officials are seeking to evade that decision. In particular, the United States Attorney's office in Boston has threatened criminal prosecution of companies that disseminate truthful off-label information, while other federal officials have indicated that such conduct may violate the federal False Claims Act or the anti-kickback statute. WLF in December 2003 began an investigation into whether such federal officials are violating the terms of the injunction entered in *WLF v. Henney*. That investigation includes a series of document requests (pursuant to the Freedom of Information Act) directed to (among others) FDA and the Office of Inspector General of the U.S. Department of Health and Human Services. WLF has also asked a number of pharmaceutical companies to share with WLF their experiences in such investigations. WLF hopes that it can gather enough information to determine whether actions by federal officials are sufficient to constitute a policy of suppressing constitutionally protected speech.

WLF Petition Regarding Direct-to-Consumer Advertising of Prescription Drugs. In 1997, FDA adopted substantial revisions to its direct-to-consumer advertising policy. FDA's action was

in direct response to WLF's July 20, 1995 Citizen Petition that sought relaxation of FDA restrictions on prescription drug advertising. The petition argued that those restrictions violated the First Amendment rights of drug manufacturers to convey truthful information to consumers, as well as the rights of consumers to receive such information. In particular, WLF asked FDA to eliminate: (1) the "brief summary" requirement, which often renders advertising non-cost-effective by requiring hundreds of words to be added to advertising; (2) the "fair balance" requirement, a totally subjective requirement that permits FDA to reject any advertisement it does not like; and (3) the requirement that advertisements be submitted to FDA for preclearance before being published. FDA's new policy substantially relaxed the "brief summary" requirements with respect to broadcast advertising. The result of that change is that television advertising of prescription drugs has increased substantially over the past eight years, and consumers have received significantly more information about these products. In November 2005, FDA conducted hearings to investigate the pros and cons of direct-to-consumer advertising; testimony from WLF attorneys pointed out the tremendous benefits that such advertising provides for consumers.

Labeling of Soda Containers. On December 16, 2005, WLF filed comments with FDA, urging the agency to reject a petition filed by the Center for Science in the Public Interest (CSPI), a Washington, D.C. based activist group founded by Ralph Nader, that would require warning labels on non-diet soda cans and bottles advising consumers, among other things, that "drinking too much soft drinks may contribute to weight gain." WLF argued that such warning labels are not mandated by law and, as a matter of public policy, are unnecessary since current labels on all beverages provide caloric content, sugar content, and other nutritional information to help consumers make informed choices.

Opposing Regulation of Internet. On November 10, 2001, FDA responded to an April 12, 2001 WLF Citizen Petition that urged the agency to adopt a rule or policy that would make it clear that health claims and other consumer information that appear on a company's website do not constitute "labeling" of that company's product, and thus, are not subject to FDA's stringent and detailed food and drug labeling requirements. Rather, any such promotional information should be regarded, at best, as advertising, and thus subject in certain circumstances to review by the Federal Trade Commission (FTC) under its "false and misleading" advertising standard. The FTC standard is more consistent with First Amendment protections of commercial speech than FDA labeling requirements. WLF's filing was prompted by an alarming FDA Warning Letter sent to Ocean Spray Cranberries, Inc. on January 19, 2001, the last day of the Clinton Administration. FDA claimed that Ocean Spray's cranberry and grapefruit juices were "misbranded" and subject to seizure simply because of certain health claims and other information that appeared on the company's website and related links. In its response to WLF's petition, FDA indicated that it would not be issuing an across-the-board regulation at this time, but that it would not generally regard a company's website content as labeling if the company does not sell products online.

Petition Regarding Disclosure of Clinical Trial Results. On December 28, 1995, WLF filed a joint petition for rulemaking with FDA and the Securities and Exchange Commission (SEC), urging FDA to exempt from FDA regulation the public disclosure of clinical test results of Investigational New Drugs (INDs). Such information is required by SEC rules to be disclosed to the investment community. Current FDA rules and policies prohibit drug companies from "promoting" or "commercializing" an IND until the drug obtains final approval. Yet the SEC

requires that drug companies file reports with that agency and inform the investment community of major product developments. FDA has interpreted its rule against "promoting" an IND to include press releases and other communications made by companies regarding the results of clinical tests of INDs. FDA has not taken any decisive action on this issue, and WLF continues to press for relaxation of speech restrictions in this area. WLF argues that investors need to receive truthful information about drugs in "the pipeline" if they are to measure accurately the value of a pharmaceutical company's stock.

Proposal Regarding Trans Fatty Acid Nutrition Labeling. On March 27, 2003, WLF filed comments with FDA, objecting to FDA's proposal to require all food containing trans fatty acids (trans fat) to include on its label the following statement: "Intake of trans fat should be as low as possible." WLF argued that requiring that statement would violate the First Amendment protection against compelled speech. WLF argued that although the First Amendment permits the government to compel commercial speech when necessary to prevent consumers from being confused or deceived, there is no serious argument that the proposed statement is necessary to prevent food labels from being confusing or deceptive. WLF stated that FDA may do no more than mandate disclosure of the quantity of trans fat contained in each serving of the food being sold. While the proposed statement may contain sound health information, it may unnecessarily alarm consumers; and WLF argued that it is not the role of the government to commandeer the property of others for the purpose of spreading information that may promote public health. In a victory for WLF, FDA announced on July 11, 2003 that it would not require food labels to include the controversial statement.

Defending Corporate Speech on Food Irradiation. On August 7, 2003, WLF filed comments with the Federal Trade Commission, objecting to efforts by activists to censure speech about food irradiation. Two activist groups, Public Citizen and the Center for Food Safety, petitioned the FTC to take enforcement action against Giant Food based on statements Giant made regarding the irradiation of its food products. Giant issued a pamphlet that, in an effort to add to consumers' understanding of irradiation, compared the irradiation process to milk pasteurization. The activist groups asserted that the law prohibits food sellers from representing irradiated food as "pasteurized." WLF's response argued that the comparison of irradiation and pasteurization is not misleading and assists American consumers in understanding that irradiation is a process designed to enhance food safety and cleanliness. WLF argued that the First Amendment protects Giant's right to make truthful statements regarding the irradiation process.

FDA Proposals to Regulate Food Labeling. WLF has long been at the forefront of efforts to ease FDA regulation of food labeling. For example, in a series of submissions to FDA in the early 1990s, WLF urged FDA to lift the ban on health-related information and certain types of pictures on food labels. The ban on health-related information eventually was lifted by Congress, and WLF has worked to ensure that the new legislation is being fairly administered.

Novartis Corp. v. Federal Trade Commission. On August 18, 2000, the U.S. Court of Appeals for the D.C. Circuit upheld an Federal Trade Commission (FTC) order requiring Novartis Corp., a pharmaceutical company, to include a governmentally-dictated message in its advertising. The court ruled that the First Amendment posed no bar to the FTC's so-called corrective advertising order. The decision was a setback for WLF, which on October 29, 1999, filed a brief

urging the court to set aside the FTC's order. The case involved an order from the FTC -- which had determined that Novartis's advertisements for Doan's Pills had been misleading in suggesting that Doan's offers more effective relief for back pain than other pain relievers -- directing Novartis to include the following statement in all Doan's advertising: "*Although Doan's is an effective pain reliever, there is no evidence that Doan's is more effective than other pain relievers for back pain.*" In its brief filed with the court, WLF argued that the FTC's corrective advertising order ought to be set aside because it violated Novartis's right not to speak. WLF said that the FTC order was particularly troublesome because the result was that Novartis had refrained from advertising at all rather than conveying the FTC's "corrective" message.

Draft Compliance Policy Guide on Labeling. On July 23, 1999, WLF filed comments with FDA, opposing its efforts to expand the definition of "labeling" under federal food and drug law. Under FDA's proposed definition, "labeling" of a drug would have included books and other publications that merely discuss a particular drug, even though that material does not "accompany" the drug as that term is commonly understood and as Congress intended. FDA ultimately abandoned its effort to expand the definition of what constitutes "labeling" of a drug or medical device.

Labeling of Genetically Engineered Products. On March 19, 2001, WLF filed comments with FDA, generally supporting the agency's proposed guidelines for the labeling of food with respect to whether it has been developed using biotechnology. WLF strongly supported FDA's tentative decision to continue its policy against mandatory labeling on the subject; WLF noted that such labeling does not provide any nutritionally meaningful information. WLF asserted, however, that industry should be afforded broad leeway when it comes to *voluntary* labeling with regard to bioengineering, because any effort to restrict industry choice significantly would raise major First Amendment issues. WLF asserted that the one area in which FDA restrictions are warranted is the area of health claims; WLF argued that labeling should not be permitted if it suggests that the labeled food is safer based on the presence/absence of genetically engineered ingredients -- because there is no sound scientific basis for such claims. FDA ultimately adopted guidelines that closely tracked WLF's suggestions.

Citizen Petition on Pharmacy Compounding. On March 6, 1992, WLF filed a Citizen Petition with FDA, alleging that the agency's efforts to control advertising by pharmacies regarding their drug compounding capabilities violated the First Amendment, and urging the agency to utilize notice-and-comment rulemaking before adopting new regulations on that subject. FDA failed to heed WLF's warnings; the result was the U.S. Supreme Court's 2002 decision in *Thompson v. Western States*, which struck down on First Amendment grounds FDA's efforts to regulate advertising regarding pharmacy compounding of drugs.

FDA Draft Guidance on Medical Product Promotion. On April 6, 1998, WLF filed comments expressing its deep reservations regarding FDA's Draft Guidance regarding "medical product promotion by health care organizations or pharmacy benefits management companies." WLF argued that FDA failed to demonstrate any need for the guidance and that it would have an adverse impact on health care. WLF also argued that FDA lacked statutory authority to issue the guidance and that it infringed the First Amendment rights of drug companies, doctors, and consumers. WLF requested that FDA withdraw the Draft Guidance and not issue it in final form.

In light of intense opposition, FDA placed the proposal on hold in July 1998 and has taken no further action.

B. Excessive FDA Caution

FDA often has exhibited excessive caution when it comes to the review and approval of new life-saving therapies. The source of that excess caution is easy to understand: government bureaucrats are fearful that they will be held responsible if they approve a product that later turns out to have adverse health effects. But as WLF has repeatedly pointed out, excessive caution by government regulators often leads to thousands of needless deaths; patients who could have been saved by a new therapy end up dying while they wait years for the new therapy to win FDA approval. WLF has worked tirelessly to ensure that FDA officials do not unnecessarily delay their review of products for safety and effectiveness. WLF recently won a major lawsuit against FDA for failing to permit the marketing of promising (but as-yet not-fully-approved) drugs to terminally ill patients who lack effective alternative treatments.

Abigail Alliance for Better Access to Investigational Drugs v. von Eschenbach. In a major victory for WLF, the U.S. Court of Appeals for the District of Columbia Circuit ruled on May 2, 2006 that terminally ill patients have a “fundamental right” – protected by the U.S. Constitution – to access to experimental drugs that have not yet been fully approved by the Food and Drug Administration (FDA). The decision is the culmination of a three-year WLF effort to overturn FDA policies that deny such access. WLF filed suit against FDA in 2003 on behalf of itself and the Abigail Alliance for Better Access to Developmental Drugs, a patients-rights group. The district court dismissed the suit, ruling that the Constitution imposes no barriers to FDA efforts to regulate the treatment decisions of terminally ill patients and their doctors. WLF appealed from that decision. The appeals court reversed, ruling 2-1 that once FDA has determined, after Phase I trials, that a potentially life-saving investigational new drug is sufficiently safe for expanded human trials, terminally ill patients have a constitutional right to seek treatment with the drug if there are no other FDA-approved drugs available to the patient. The court held that the Fifth Amendment’s Due Process Clause encompasses a right, recognized throughout American history, of all individuals facing terminal illnesses to make fundamental decisions regarding whether to seek or not to seek medical treatment. The court said that if FDA wishes to prevent such patients from gaining access to investigational drugs that have completed Phase I trials, it bears the burden of demonstrating that its restrictions are “narrowly tailored” to serve a compelling governmental interest. On June 16, 2006, FDA petitioned the appeals court to rehear the case.

In re Tier 1 Initial Approval. In light of the continuing failure of the FDA to allow terminally ill patients to obtain promising new drugs in a timely manner, WLF filed a Citizen Petition with FDA on June 11, 2003, seeking faster drug availability for these patients. As in its lawsuit, WLF is representing the Abigail Alliance for Better Access to Developmental Drugs, an Arlington, Va.-based group of terminally ill patients and parents of terminally ill patients who have tried and failed to obtain access to drugs that are tied up in the FDA’s approval process (see above). WLF’s petition urges the adoption of a preliminary approval program, “Tier 1 Initial Approval,” that would make promising new drugs available to patients with life-threatening illnesses while clinical trials and FDA reviews are underway. The petition shows in detail that such a program is within the

FDA's statutory authority and does not require new legislation – contrary to past contentions by FDA staff. WLF wrote to the new acting FDA commissioner on April 16, 2004, to urge prompt action on the issue.

Washington Legal Foundation v. Shalala. In the early 1990s, FDA adopted a policy that imposed virtually insurmountable roadblocks in the path of heart patients who sought human-tissue heart valve transplant surgery. Although human-tissue heart valve surgery had been widely performed since the early 1960s, FDA suddenly decided for the first time that such valves were subject to FDA regulation, and a multi-year review process was imposed before FDA would consider approving use of what FDA now deemed a “medical device.” The effect of that decision was to render such surgery unavailable to all but the wealthiest Americans. Infant children were most directly affected by the policy, because they did not have available to them any equally effective, alternative procedures. On May 20, 1992, WLF filed a Citizen Petition with FDA, asking that its new policy be rescinded. WLF filed the petition on behalf of itself, two patients in need of heart valve implant surgery, and three of the nation's leading heart surgeons -- Dr. Robert B. Karp of the University of Chicago, Dr. Richard A. Hopkins of Georgetown University, and Dr. A.D. Pacifico of the University of Alabama at Birmingham. After FDA denied WLF's petition in 1993, WLF filed suit on behalf of its clients in federal court in the District of Columbia, challenging FDA's new policy as a violation of federal law. WLF won a huge victory in the case in 1994 when FDA abandoned its controversial policy. FDA's sudden policy shift was prompted by WLF's suit and a related suit in Chicago; FDA acted only after it realized, based on preliminary rulings, that it faced near-certain defeat in court.

Approval of Silicone Gel-Filled Breast Implants. On March 28, 2005, WLF filed comments with FDA's Medical Devices Advisory Committee, charging that FDA denial of premarket applications (PMAs) submitted by two companies seeking permission to market silicone gel-filled breast implants would violate clearly established rules governing administrative procedure. WLF stated that the Administrative Procedure Act (APA) prohibits FDA from imposing (as it has contemplated doing) far stricter approval requirements on silicone breast implants than it has imposed on similar medical devices. FDA indicated that it wanted Mentor and Inamed (the two manufacturers) to provide ten years of data regarding the health consequences of breast implant failure (particularly rupture). Both PMAs include at least three years of post-implant data on the large number of women included in Mentor's and Inamed's studies. Were FDA to require long-term post-implant follow-up data, Mentor and Inamed would not be able to gain approval of their PMAs for many years to come. WLF charged that the APA prohibits FDA from imposing long-term pre-approval data requirements on the silicone breast implant PMAs, given that FDA has never previously imposed such requirements on similar medical devices. WLF Chief Counsel Richard Samp later elaborated on WLF's charges during testimony given to an FDA panel on April 11. On October 11, 2005, WLF reiterated those same arguments in a brief to FDA that responded to a petition from Public Citizen and others that urged rejection of the PMAs. Recent signs from FDA have been encouraging: in the summer of 2005, it tentatively approved both PMAs.

Emergency Approval of Medical Products. On September 6, 2005, WLF filed comments in support of FDA's issuance of guidance on emergency approval of medical products. Congress has given FDA authority to allow the use of unapproved medical products, or to authorize

unapproved uses of an approved product, in response to a heightened risk of attack from biological, chemical, radiological, or nuclear weapons. While expressing its support, WLF expressed concerns regarding the preemption aspects of the proposal. WLF argued that those provisions should be clarified to establish that the preemptive effect of an emergency authorization covers labeling matters and tort liability. WLF's comments noted that the emergency powers created by Congress to protect the public health would be frustrated by assertions of state or local authority in either of these areas - either to establish contrary or supplemental labeling requirements or to impose tort liability where a manufacturer is acting in compliance with an emergency use authorization.

Restriction on Lung Cancer Drug. On July 25, 2005, WLF filed comments with the Food and Drug Administration asking the agency to withdraw or modify its order for the restrictive labeling of the lung cancer drug Iressa. FDA's action effectively limits the use of Iressa in the United States to the approximately 4,000 patients already being treated with it. WLF's comments argued that this limitation on the availability of Iressa is unjustified and will harm lung cancer patients in the future who have no other approved treatment options and who may benefit from this medicine. WLF previously filed comments on April 20, 2005, with the FDA opposing a petition from the Nader group Public Citizen, Inc. in which Public Citizen sought the immediate withdrawal of Iressa.

Regulation of Pain Medication. On March 21, 2005, WLF filed formal comments with the Drug Enforcement Administration (DEA), urging that DEA regulation of pain medication not create a risk of denying needed pain medicines to terminally ill patients and chronic pain patients. In response to DEA's plan to issue new guidance regarding dispensing of controlled substances, WLF emphasized the importance of granting physicians leeway in treating *bona fide* pain patients, and stated that physicians should not be at risk of prosecution unless they distribute or prescribe controlled substances to a person outside the scope of legitimate practice. In separate comments filed the same day, WLF also expressed concern that DEA's new mandate to withhold approval for procurement of controlled substances used in the production of pain medicines should not be used by DEA to second-guess FDA approval decisions. WLF argued that DEA's role in this regard is advisory and that Congress has vested drug approval authority with FDA.

WLF Advertising Campaigns. In combating excessive FDA caution, WLF has not confined its efforts to litigation and publishing. WLF has also undertaken numerous advertising campaigns designed to focus public attention on FDA's shortcomings. When 1994 studies showed that FDA's delays had led to a record backlog of products awaiting approval, WLF sought to publicize those delays by launching a major public relations campaign that featured six different advertisements in the national editions of the *Wall Street Journal*, *USA Today*, *Washington Post*, *The New York Times*, and *National Journal*. The advertisements were widely praised for their effectiveness, each winning a prestigious Addy Award in 1995. WLF's work was widely credited with forcing FDA to streamline its product approval process and also brought the issue to the attention of major decision makers in government. Congress subsequently adopted major reform legislation in 1997.

Financial Disclosures by Investigators Conducting Clinical Studies. On December 21, 1994, WLF filed with FDA its opposition to FDA's proposal to require detailed disclosure of

financial interests that could potentially bias the outcome of clinical trials. WLF argued that this proposal would needlessly complicate and slow the product-approval process, because there was *no* evidence of such bias in any clinical trials, yet the burdensome nature of these disclosure and reporting requirements would lead some leading doctors simply to forgo participation in clinical trials. Despite WLF's strong opposition, FDA adopted this proposal on February 2, 1998. WLF continues to agitate for repeal of this unnecessary and counter-productive regulatory requirement.

CFC-Containing Inhalers. On May 5, 1997, WLF filed comments with the FDA opposing any effort to ban the use of Chlorofluorocarbon (CFC) propellants in self-pressuring containers that are used by asthmatics. FDA had proposed such a ban because it feared that the propellants might be damaging the earth's ozone layer and believed that such propellants were no longer essential. WLF supported the position taken by the Allergy and Asthma Network and Mothers of Asthmatics organization that such inhalers should not be banned in the absence of an effective alternative, especially in light of EPA's current proposal to limit ozone levels in the name of asthmatics. FDA delayed making its proposal final; when it eventually issued a new proposed rule on July 24, 2002, the proposal was far less objectionable to asthmatics.

Waiver of FDA Regulations for Operation Desert Storm. On January 22, 1991, WLF petitioned FDA to permit the waiver – in connection with military operations in the Persian Gulf – of regulations prohibiting the administration of certain drugs without the informed consent of the recipient. WLF argued that military necessity required granting the waiver; WLF argued that the effectiveness of military units could not be assured unless all soldiers in those units were inoculated against possible biological attack. WLF noted that the drugs in question had been determined to be safe. FDA ultimately granted the waiver.

C. Opposing Interference with the Free Market

WLF believes that the best way to ensure an adequate supply of medical products and services is to allow the free market to decide how to price such products and services. The experience in Canada (where widespread government intervention in the market has led to product shortages, long waiting lists for surgery, and patients crossing into the United States in search of high-quality health care) well demonstrates the folly of price controls. Nonetheless, a number of States in recent years have reacted to increases in health care costs by seeking to impose price controls, particularly with respect to prescription drugs. WLF has gone to court repeatedly to challenge such efforts. WLF has filed its court papers on behalf of a broad coalition of patients-rights groups that have seen first-hand the damage caused by price-control efforts: the Kidney Cancer Association, the Allied Educational Foundation, the Seniors Coalition, the International Patient Advocacy Association, and the 60 Plus Association. WLF has also opposed proposed federal initiatives – designed to cut costs – whereby the federal government would deny Medicare patients coverage for expensive but life-saving drugs which their doctors have prescribed for them, and would divert funds raised through “user fees” (ostensibly imposed to cover costs associated with product approval reviews) to cover routine FDA expenditures.

Pharmaceutical Research and Manufacturers of America [“PhRMA”] v. Walsh. On May 19, 2003, the U.S. Supreme Court declined to strike down a Maine law that imposes strict controls

on the price of all prescription drugs sold in the State. The decision was a setback for WLF, which filed a brief arguing that the price control scheme is void because it conflicts with federal laws regulating the sale of drugs. The Court held that the challenge to the Maine law was premature, because the program has not been operating long enough to allow a determination whether (as alleged by WLF) the price controls are reducing Medicaid recipients' access to life-saving drugs. The Court also stated that it was reluctant to strike down the Maine law in the absence of a ruling by federal officials that the Maine law conflicts with federal law. Such a ruling is a distinct possibility, because the federal government filed a brief with the Supreme Court asking that the Maine law be struck down. The Court remanded the case to the trial court and indicated that, on remand, the law should be struck down unless Maine can demonstrate that its program in some way serves the Medicaid law's purposes.

PhRMA v. Thompson. On December 23, 2002, the U.S. Court of Appeals for the District of Columbia Circuit struck down a separate Maine law (not the one at issue in *Walsh*) that also imposed strict controls on the price of many prescription drugs sold in the State. The decision was a victory for WLF, which filed a brief urging that the law be struck down. The court agreed with WLF that the Maine price control scheme was invalid because it conflicted with federal laws regulating the sale of prescription drugs. The court further agreed that the U.S. Department of Health and Human Services (HHS) acted improperly in approving the Maine program. WLF had noted that although Maine purported to adopt the program pursuant to its authority under the Medicaid law, those covered under the Maine program are moderate income individuals who are too wealthy to qualify for Medicaid.

PhRMA v. Thompson II. On April 2, 2004, the U.S. Court of Appeals for the District of Columbia Circuit upheld a Michigan statute that imposes price controls on pharmaceuticals sold to Medicaid recipients in the State. The decision was a setback for WLF, which filed a brief challenging the statute. The appeals court rejected WLF's argument that the Michigan program is invalid because it conflicts with the federal Medicaid law. While agreeing with WLF that the Medicaid statutes in question could reasonably be interpreted as prohibiting the type of price control scheme imposed by Michigan, the court held that Medicaid officials' contrary interpretation was also plausible and that it was required to defer to those officials' interpretation of the law. WLF also argued that the program will result in substandard care for Michigan's poorest citizens, because it will result in their being denied access to essential drugs that the State has deemed too expensive.

Opposing Unwarranted User Fees. On December 14, 2005, WLF filed comments with the FDA on the reauthorization of the prescription drug user fee program. WLF warned against abuse of the program. Under the Prescription Drug User Fee Act (PDUFA), sponsors of new drug applications pay user fees to allow FDA to hire more scientific review staff and improve its information technology for the purpose of expediting the new drug review process. In its comments, WLF argued that because PDUFA's purpose is to accelerate the availability of safe and effective new medicines, PDUFA fees should be expended only on direct application-related costs – not on unrelated costs as FDA officials have suggested. WLF argued that the prescription drug user fee program must not evolve into an industry-specific tax to finance FDA's normal regulatory and law enforcement activities.

CMS Proposal On Tying Coverage To Clinical Trial Participation. WLF filed comments on June 6, 2005, with the Centers for Medicare & Medicaid Services (CMS), the agency of the U.S. Department of Health and Human Services that operates the Medicare program, asking the agency to withdraw its proposal to tie reimbursement for selected new treatments to the patient's participation in a clinical trial or a similar evidence-gathering process. WLF argued that such requirements may restrict patients' access to needed care and that CMS has numerous alternative tools with which to spur research. WLF further argued that CMS has not justified such requirements under the Medicare statute's "reasonable and necessary" provision governing reimbursement.

Oral Cancer Drug Demonstration Project. On June 25, 2004, WLF filed comments with the Centers for Medicare & Medicaid Services (CMS), the agency of the U.S. Department of Health and Human Services that operates the Medicare program, regarding the agency's proposed exclusions from a congressionally-mandated Medicare demonstration project known as the "Section 641" demonstration. CMS subsequently announced that it was reversing its decision to exclude all off-label prescriptions from the demonstration, and that it would cover a narrow class of off-label uses – those for which the indication "is being reviewed by the FDA" and for which the FDA has stated that "no filing issues remain." As an interim measure prior to the implementation of the newly enacted prescription drug benefit in 2006, the demonstration project was to give 50,000 patients access to oral substitutes for drugs that would otherwise have been administered in a doctor's office. WLF argued that the agency should abandon its proposal to exclude off-label uses of drugs from the project because that exclusion would harm patients' health and violate congressional intent.

CMS Guidance on "Part D" Drug Formularies. On August 19, 2005, WLF filed comments with the Centers for Medicare & Medicaid Services (CMS), the federal agency that oversees the Medicare program, asking the agency to withdraw its plan to allow the exclusion of the lung cancer drug Iressa from drug plans under the new "Part D" prescription drug benefit. WLF's comments are in response to a CMS decision to exclude Iressa from a requirement that carriers offering coverage under the new benefit program must include in their formularies "all or substantially all" cancer drugs. WLF noted that Iressa is believed to represent the best available care for many lung cancer patients in the Medicare population for whom other therapies have failed.

Coverage of Cancer Drugs. On February 10, 2004, WLF filed a petition with CMS, asking the agency not to terminate coverage of "off-label" uses of certain cancer drugs. The petition was in response to national coverage reviews in which CMS is considering whether to end those reimbursements. In the petition, WLF noted that off-label prescribing – that is, a physician's use of a drug for conditions other than the specific ones for which the FDA has given marketing approval – is common and important to medical practice in obstetrics, pediatrics, and AIDS treatment, as well as cancer treatment. WLF was concerned that a denial of reimbursement for cancer drugs would not only deny the treatments of choice to thousands of dying cancer patients, but would set a precedent for denying proper treatment to other patients.

PhRMA v. Medows. On May 27, 2003, the U.S. Supreme Court declined to review a decision that upheld a Florida statute that imposes strict price controls on prescription drugs sold to Medicaid recipients in the State. WLF had urged the Court to review the case, arguing that the Florida price control scheme is invalid because it conflicts with federal Medicaid law. WLF also

argued that the Florida statute will result in substandard medical care for the State's poorest citizens, because it will result in their being denied access to essential drugs that the States has deemed too expensive. WLF also filed a brief in the case when it was before the U.S. Court of Appeals for the Eleventh Circuit in Atlanta, which upheld the statute in a September 6, 2003 decision.

PhRMA v. Michigan Dept of Community Health. This was a state-court challenge to Michigan's price control scheme for prescription drugs. On June 27, 2003, the Michigan Supreme Court declined to review a decision that upheld a program that imposes strict price controls on pharmaceuticals sold to Medicaid recipients in the State. The decision was a setback for WLF, which filed a brief on February 5, 2003, urging that review be granted. WLF argued that the program was invalid because it conflicted with Michigan law and violated separation-of-powers principles of the Michigan Constitution. WLF also argued that the program would result in substandard care for the State's poorest citizens, because it would result in their being denied access to essential drugs that the State has deemed too expensive. WLF argued that the price control statute was inconsistent with the Michigan Constitution because the Michigan legislature purported to retain a "legislative veto" over any price controls adopted by the Executive Branch – a retention of power that WLF contended violates separation-of-powers principles. WLF also filed a brief in the case when it was before the Michigan Court of Appeals, which issued a decision on December 13, 2002 upholding the program.

Proposal That Prescription Allergy Medications Be Switched to OTC Status. On May 11, 2001, WLF filed comments with FDA, objecting to a proposal that three popular prescription allergy drugs – Allegra, Claritin, and Zyrtec – be switched to over-the-counter (OTC) status over the objections of their manufacturers. WLF renewed its objections in petitions submitted to FDA Commissioner Mark McClellan (on May 13, 2003) and HHS Secretary Tommy Thompson (on October 8, 2003). WLF argued that the proposed switch would undermine the intellectual property rights of the manufacturers of the drugs in question and would have significant adverse effects on health care in this country. WLF noted that FDA to date has never approved a switch to OTC status over the manufacturer's objection. WLF argued that if the switch is approved here, the lesson to be learned by manufacturers is that the financial rewards they heretofore have hoped to gain from the successful development of pioneer drugs can no longer be counted on. The inevitable results will be a reduction in research and development expenditures by major pharmaceutical companies. Such a reduction will have long-term adverse effects on health care, WLF argued.

United Seniors Association, Inc. v. Shalala. In July 1999, the U.S. Court of Appeals for the District of Columbia Circuit ruled that Medicare laws that restrict the right of senior citizens to contract with their physicians do not violate the Constitution. The decision was a setback for WLF, which filed a brief in support of the senior citizens who were challenging the law. WLF argued that Section 4507 of the Medicare laws effectively prohibits seniors from entering into private contracts with their physicians, by requiring physicians entering into such contracts to forgo participation in the Medicare program for two years. WLF argued that the Constitution recognizes an individual's right to autonomy in pursuit of health, and that that right encompasses selection of a physician and a course of treatment.

D. Exposing FDA Misconduct

The great majority of FDA employees are hard-working and dedicated individuals who act in good faith to improve health care. However, a handful of FDA employees has from time-to-time undermined FDA's goals by surreptitiously working with plaintiffs' attorneys whose focus is to earn millions in fee awards by bringing tort suits (usually unwarranted) against the pharmaceutical industry. WLF has worked throughout the past decade to expose such misconduct.

Improper Contacts with Plaintiffs' Bar. Through a series of requests filed under the Freedom of Information Act in the mid 1990s, WLF slowly uncovered a pattern of improper contacts between senior FDA officials and members of the plaintiffs' bar. The attorneys were seeking to delay FDA-approval of certain medical devices, in hopes of gaining an advantage in pending litigation against several device manufacturers. Documents WLF uncovered led to a formal investigation (by FDA's Office of Internal Affairs) of Mitch Zeller, a Special Assistant to then-FDA Commissioner David Kessler. Documents uncovered by WLF in July 1997 revealed that Zeller had met with John J. Cummings, the lead plaintiffs' attorney in pending multi-district product liability litigation against pedicle screw manufacturers. WLF also discovered that Zeller took handwritten notes of that meeting. FDA officials at first denied the existence of those notes, then refused to release all but one page of the notes. In July 1997, WLF appealed FDA's decision not to release the notes. On April 23, 1998, FDA finally released those notes to WLF.

Violations of FDA Regulations by Senior FDA Personnel. After uncovering a meeting between FDA's Mitch Zeller and senior members of the plaintiffs' bar (see above), WLF discovered that Zeller never filed an official report of the meeting – as is required by FDA regulations. WLF thereafter filed a complaint against Zeller with FDA's Office of Internal Affairs (OIA), complaining of Zeller's misconduct. After conducting a complete investigation, OIA sustained WLF's charges.

WLF Investigation of Abusive Federal Inspections and Enforcement Actions. In September 2003, WLF launched an investigation of abusive federal agency inspection and enforcement actions against businesses and individuals. In a series of Freedom of Information Act requests filed with FDA and five other regulatory agencies, WLF demanded that the agencies disclose copies of complaints filed against any enforcement agent, as well as the result of any investigation by the agencies' Inspector General or similar official. WLF also asked that the agencies disclose any training manuals that disclose enforcement policies. WLF's probe into agency misconduct was spurred by a number of instances in which enforcement agents harassed and threatened company managers, their employees, and others in the course of investigating suspected violations of agency regulations.

Petition Regarding Leaks of Confidential Information. On February 6, 1995, WLF filed a Citizen Petition with FDA, asking the agency to begin cracking down on widespread leaks of confidential information in its possession. WLF asked FDA to establish procedures whereby it would be required to investigate significant unauthorized document disclosures and to punish those found responsible. WLF also asked FDA to establish an office whose purpose it would be to receive complaints regarding unauthorized releases and to track the frequency and patterns of such releases. WLF cited "adverse reaction reports" – reports voluntarily submitted by a manufacturer

to FDA in which the manufacturer discloses health problems experienced by a user of its product – as a particular problem area. Much of the information in such reports is supposed to be kept confidential, but such information was regularly finding its way into the hands of plaintiffs' attorneys. FDA responded to WLF in August 1995, stating that it was taking unspecified steps to address the issue. The problem appeared to abate somewhat in following years, particularly after HHS's Office of the Inspector General (at WLF's request) began an investigation of the issue.

Sofamor Danek Group, Inc. v. Gaus. On August 4, 1995, the U.S. Court of Appeals for the District of Columbia Circuit ruled that expert panels convened by the Department of Health and Human Services (HHS) to develop clinical practice guidelines for medical providers did not violate the Federal Advisory Committee Act (FACA) by meeting in secret. The decision was a setback for WLF, which filed a brief arguing that the secret meetings violated FACA. WLF argued that the courts were creating a "giant loophole" in FACA by ruling that a panel of private citizens convened by HHS is not an "advisory committee" (as defined by FACA) when its advice is directed primarily to the private sector rather than to government officials. WLF argued that FACA was intended by Congress to require openness among *all* advisory groups that are utilized by government officials, regardless whether a group's advice is also directed to the private sector.

E. Opposing Unwarranted Tort Suits

It has become a mantra of plaintiffs' lawyers: *anyone* who suffers any injury deserves to be compensated by one or more deep-pocketed corporations. WLF strongly disagrees and works to ensure that our tort system permits recovery only against the blameworthy. Unfortunately, our health care system is being undermined because the huge liability verdicts being rendered against health care providers and drug manufacturers are discouraging the level of investment – both of money and human resources – necessary to maintain public health. Throughout the past decade, WLF has participated in numerous proceedings in an effort to counteract that trend.

Abdullahi v. Pfizer, Inc. On May 24, 2006, WLF filed a brief in the U.S. Court of Appeals for the Second Circuit, urging the court to dismiss claims that a pharmaceutical company violated international law when a team of its doctors provided emergency medical aid to children in Nigeria suffering from meningitis. WLF argued that federal law does not permit private parties to file tort suits in federal court asserting that doctors violated international law by allegedly treating patients without first obtaining the patients' informed consent. WLF urged the court to reject claims that such suits are authorized by the Alien Tort Statute (ATS), a 1789 law that lay dormant for nearly 200 years before activists began seeking to invoke it in the past several decades. WLF argued that the ATS was adopted in 1789 to allow the federal courts to hear cases involving piracy and assaults on ambassadors. WLF charged that the ATS has been transformed by activist attorneys into a tool for second-guessing American foreign policy and for attacking the overseas conduct of corporations.

Zito v. Zabarsky. On May 16, 2006, the Appellate Division of the New York Supreme Court issued an order declining to reconsider a decision that permits questionable expert testimony to be introduced in a medical malpractice case. The decision was a setback for WLF, which filed

a brief urging reconsideration. WLF's brief argued that expert medical testimony must be excluded from court proceedings when it is based on "junk science." WLF argued that the testimony in this case should have been excluded because the medical conclusions reached by the "experts" lacked support in the medical literature. The American Medical Association also urged the appeals court to reconsider its decision. WLF argued that allowing the "expert" testimony in this case was particularly inappropriate because it consisted of a claim that an FDA-drug had caused the plaintiff's disease, yet the drug in question has been marketed for decades without any indication in the medical literature that the drug can trigger that disease.

City of Hope Medical Center v. Genentech, Inc. On January 26, 2006, WLF filed a brief the California Supreme Court urging it to reverse a court of appeal ruling that upheld a compensatory damages award of \$300 million along with an unprecedented \$200 million punitive damages award against Genentech, a biotech company. The company was involved in a contract dispute over royalties with City of Hope Medical Center which developed synthesized DNA material. WLF argued that if the massive award is not overturned on appeal, businesses involved in typical contract disputes risk debilitating lawsuits by plaintiffs' attorneys not only for normal contract damages, but also for multimillion dollar punitive damages awards. WLF also argued that the excessive award was not justified and should not have been imposed simply because the company could afford to pay the amount without going bankrupt. WLF also filed a brief in this case in 2004, urging the California Supreme Court to agree to hear Genentech's appeal; the court's January 2005 decision to grant review was a significant victory for WLF.

United States v. Rx Depot, Inc. On February 22, 2006, the U.S. Court of Appeals for the Tenth Circuit in Denver declined an opportunity to prevent FDA from exercising enforcement powers that the evidence suggests were never delegated to it by Congress. The court's decision, affirming FDA's authority to seek a massive damage award against an internet pharmaceutical distributor, was a setback for WLF, which had filed a brief urging the court to deny FDA that authority. In its brief, WLF argued that FDA has no power to seek disgorgement or restitution from companies alleged to have violated federal drug laws. WLF argued that Congress has spelled out precisely what enforcement powers it has given to FDA, and that disgorgement and restitution are not among them. WLF argued that FDA, throughout most of its history, never asserted a right to seek disgorgement; WLF charged that FDA only recently began asserting that power, to have a big club with which to intimidate manufacturers who might otherwise seek to challenge FDA. The Tenth Circuit disagreed; it upheld FDA's authority to seek restitution, finding that the FDCA's grant of authority to "restrain" violations of the Act should be read broadly to include all forms of injunctive relief. On May 23, 2006, the defendant petitioned the U.S. Supreme Court to review the case.

United States v. Lane Labs-USA, Inc. On October 21, 2005, the U.S. Court of Appeals for the Third Circuit in Philadelphia declined an opportunity to prevent the Food and Drug Administration (FDA) from exercising enforcement powers that the evidence suggests were never delegated to it by Congress. The court's decision, upholding a massive \$109 million restitution award against a dietary supplement manufacturer, was a setback for WLF, which had filed a brief urging the court to overturn the award. WLF had argued that FDA has no power to seek restitution from manufacturers alleged to have violated the Federal Food, Drug, and Cosmetics Act (FDCA). WLF argued that Congress has spelled out precisely what enforcement powers it has given to

FDA, and that restitution is not among them. The Third Circuit disagreed; it upheld FDA's authority to seek restitution, finding that the FDCA's grant of authority to "restrain" violations of the Act should be read broadly to include all forms of injunctive relief. The case involves a dietary supplement manufacturer accused by FDA of improperly promoting its products as a treatment for cancer; it was ordered to refund to consumers all money used to buy its products.

Howland v. Purdue Pharma, L.P. On December 15, 2004, the Ohio Supreme Court overturned a lower court's decision to certify as a state-wide class action a product liability suit brought by three individuals who claim they were injured due to their use of the defendant's pain-relief medication. The decision was a victory for WLF, which filed a brief urging that the class be decertified. WLF argued that personal injury product liability suits are virtually never appropriate for class action treatment because the claims of each class member are unique – for example, each plaintiff must separately establish such elements of his/her tort claim as inadequacy of warning, reliance, causation, and damages. The court agreed with WLF that when, as here, individual issues of fact and law predominate over common issues, class action treatment is rarely appropriate, and that the trial court had given inadequate consideration to the "predominance" issue when it certified the class.

American Home Products, Inc. v. Collins. On April 18, 2005, the U.S. Supreme Court issued an order declining to review an appeals court decision that makes it much more difficult for out-of-state defendants to move their lawsuits from state court to federal court. The decision was a setback for WLF, which had filed a brief urging the Court to review (and ultimately overturn) the lower court decision. The suit at issue is one filed against all the major childhood vaccine manufacturers, and threatens to drive even more manufacturers out of the market. WLF argued that the lower court defined "fraudulent joinder" in an unnecessarily narrow manner. WLF argued that plaintiffs' lawyers regularly join fraudulent defendants to their lawsuits in an effort to prevent out-of-state corporations from moving lawsuits to federal court, which are generally considered less hostile to out-of-state corporations than are state courts. WLF argued that the appeals court decision frustrates the will of Congress that cases of this sort be removable to federal court as a means of ensuring that out-of-state defendants can have their cases heard in an impartial forum.

Legal Advice Regarding National Uniformity for Food Act. On November 29, 2005, at the request of U.S. Representative Edolphus Towns, WLF attorneys provided him with legal counsel regarding the propriety of the proposed National Uniformity for Food Act of 2005 ("NUFA"), which would require national uniformity in food safety and warning requirements. WLF's legal memorandum concluded that Congress would be acting appropriately were it to adopt the legislation. WLF concluded that NUFA is consistent with the federal government's traditional role in the regulation of interstate commerce and an appropriate response to the disruptions in interstate commerce caused by tort suits filed pursuant to California's Proposition 65. WLF praised NUFA as "a carefully designed effort to balance the respective roles of the federal and State governments in food safety issues." WLF said that NUFA would have a significant impact only in those few States – such as California – in which excessive imposition of food warning requirements (requirements often imposed by means of lawsuits filed by private citizens) is having a negative effect on interstate commerce.

Dura Pharmaceuticals v. Broudo. On April 18, 2005, the Supreme Court unanimously

reversed an appeals court ruling that had established a highly relaxed pleading standard for attorneys filing securities class action cases against publicly-held companies. Instead, the Supreme Court agreed with WLF that a plaintiff in such suits must establish “loss causation” – that is, that the stock price was inflated due to the company’s misstatements and that a later drop in the stock price was causally related to the disclosure of the truth about the misstatements. The Court noted that there may be many reasons, unrelated to alleged wrongdoing, why the price of the stock dropped. The Court agreed with WLF that Congress had enacted the Private Securities Litigation Reform Act (PSLRA) in 1995 to prevent class action attorneys from filing securities fraud cases based on nothing more than a drop in stock price. The decision could go a long way in reducing the number of abusive lawsuits filed against pharmaceutical companies.

Baxter International Inc. v. Asher. On March 21, 2005, the U.S. Supreme Court declined to review this case, thereby passing on an opportunity to give real meaning to a 1996 federal law that was intended to limit the liability of corporations that make projections (“forward-looking statements”) regarding future sales and earnings. The decision was a setback for WLF, which had filed a brief urging that review be granted. The Private Securities Litigation Reform Act (“PSLRA”) creates a “safe harbor” for forward-looking statements; provided that such statements are accompanied by “meaningful” cautionary statements, the safe harbor provides that the statements cannot be used to hold a publicly held corporation liable to its shareholders for making false statements, regardless how inaccurate the statements turn out to be. In this case, the appeals court held that the PSLRA safe harbor cannot be invoked to win dismissal of a securities law class action at the pleadings stage because the issue of whether the accompanying cautionary statements are sufficiently “meaningful” can never be determined until after all pre-trial discovery is complete and the facts of the case have been fully fleshed out. In urging that the Court review (and ultimately overturn) the appeals court decision, WLF argued that the PSLRA was intended to permit defendants to invoke the “safe harbor” provision to win dismissal of suits at the pleadings stage. WLF argued that by precluding all possibility of early dismissal, the appeals court essentially wrote the safe harbor out of the law, because the principal purpose of the provision was to allow corporations to win dismissal of “forward-looking statement” lawsuits without having to incur the huge drain on resources that the litigation discovery process generally entails.

Stetser v. TAP Pharmaceutical Products, Inc. On July 6, 2004, the North Carolina Court of Appeals issued an opinion that imposes strict limits on nationwide class action suits against drug manufacturers. The decision was a victory for WLF, which had filed a brief urging that the lower court’s class certification order be overturned. WLF’s brief argued that plaintiffs’ lawyers often bring such nationwide class actions as a means of coercing a settlement, without regard to the merits of the suit. Such suits tend to be totally unmanageable, because class members often have widely varying damage claims, and different sets of laws often apply to class members from different states. In this case, the trial judge certified a nationwide class of consumers allegedly injured by the pricing policies of several drug companies. He attempted to avoid unmanageability problems by decreeing that all claims would be judged under North Carolina law, the state in which the suit was filed. The court of appeals agreed with WLF that applying North Carolina law violated the due process rights of the vast majority of litigants who had no connection with North Carolina, and that even the defendants (which are headquartered in other states) had no more than minimal contacts with North Carolina. The court of appeals remanded the case to the trial court for reconsideration; its opinion indicates that if the trial court chooses to certify any plaintiff class

at all, the class must be limited to North Carolina residents.

PacifiCare Health Systems, Inc. v. Book. On April 7, 2003, the U.S. Supreme Court mandated the enforcement of agreements to arbitrate commercial disputes, regardless whether the remedies available in an arbitration proceeding are less broad than those available in a lawsuit. The decision was a victory for WLF, which filed a brief urging that the enforceability of arbitration agreements be upheld. The decision (involving a dispute between HMOs and a group of doctors) likely will lead to reduced health care costs. The court of appeals refused to enforce an arbitration agreement between the HMO and the doctors because the arbitrator likely would not have been permitted to award punitive damages, a remedy that the plaintiffs could seek in a federal court action. WLF argued that a party that decides in advance that it will arbitrate all disputes – a very rational decision given arbitration's speed and efficiency advantages over litigation – should not be permitted to wriggle out from that agreement simply because it later concludes that litigation offers it tactical advantages.

In re Vitamin Cases/Phillion v. Lonza. The California Supreme Court on June 11, 2003 let stand a class action settlement in which the plaintiffs' lawyers are to receive millions in fees, while consumers – their purported clients – will receive nothing. WLF had filed a brief on May 9, 2003 in support of the objecting class members, arguing that the settlement violated California law and urging the High Court to grant review. The suit raised price-fixing charges against various vitamin manufacturers. As a result of the settlement to which WLF objected, the consumers will have no opportunity to seek compensation of any kind. Instead, the so-called *cy pres* settlement of \$38 million will be paid to governmental and nonprofit organizations; the plaintiffs' attorneys will receive an award of \$16 million in fees. WLF argued that the case was a classic example of abuse of the litigation process by plaintiffs' attorneys.

Taylor v. SmithKline Beecham Corp. On March 24, 2003, the Michigan Supreme Court upheld a Michigan statute that precludes design-defect tort actions against the manufacturer of any drug that has been approved for sale by FDA. The decision was a victory for WLF, which filed a brief in the case, urging that the statute be upheld. The court agreed with WLF that the Michigan legislature acted properly in adopting the statute and that it did not violate a state constitutional provision that prohibits the legislature from delegating its powers to a federal administrative agency. WLF has argued repeatedly that such measures are necessary to hold down health care costs and to ensure that low-income Americans continue to have access to quality health care.

Pegram v. Herdrich. On June 12, 2000, the U.S. Supreme Court issued a decision that is likely to rein in the continuing expansion of civil lawsuits brought under ERISA, the federal pension law. The decision was a victory for WLF, which had argued in a November 12, 1999 brief that the lower court's decision threatened to undermine health care in this nation by allowing a patient to sue his health care provider under ERISA anytime the provider takes into account cost considerations when deciding how to treat the patient. The Court noted that patients are already permitted to sue their doctors for malpractice under state tort law. The Court agreed with WLF's argument that a patient should not *also* be permitted to file an ERISA suit against his HMOs and doctors (based on a claim that they allegedly violated a fiduciary duty under ERISA to act in the patient's best interests). WLF had argued that allowing such suits would lead to dramatically increased health-care costs by preventing doctors and HMOs from trying to control costs. WLF

filed an earlier brief in the case on July 28, 1999, successfully urging the Court to grant review.

Dow Chemical Company v. Mahlum. On December 31, 1998, the Nevada Supreme Court upheld the imposition of compensatory damages against Dow Chemical Co. for breast implants manufactured by Dow Corning, but struck down the imposition of punitive damages against the company. The decision was a partial victory for WLF, which in August 1996 had filed a brief urging the court to reverse a trial court ruling that imposed a \$14 million judgment upon Dow Chemical for the manufacture and sale of silicone breast implants by another company, Dow Corning. The plaintiffs sued Dow Chemical for injuries allegedly suffered in 1985 by silicone breast implants that were tested, manufactured, and sold by Dow Corning, a legally distinct company from Dow Chemical. The plaintiffs' attorneys argued that Dow Chemical should be held liable for not disclosing studies done in 1948, 1956, and 1970 regarding the industrial uses of certain silicones. But those studies had nothing to do with the different type of gel silicone developed and tested many years later by Dow Corning.

Artiglio v. Corning, Inc. On July 20, 1998, WLF scored a major victory when the California Supreme Court affirmed a lower court ruling that Dow Chemical Co. was not liable for any damages allegedly caused by breast implants manufactured by another company, Dow Corning Corp. WLF filed a brief in the case in June 1997, urging the court to affirm the lower court ruling. The plaintiffs sued Dow Chemical, Corning, and Dow Corning for injuries allegedly caused by silicone breast implants tested, manufactured, and sold only by Dow Corning. Because Dow Corning later declared bankruptcy, the plaintiffs' attorneys pursued Dow Chemical on the novel theory that it should be held liable for not disclosing studies done in 1948, 1956, and 1970 regarding the industrial uses of certain silicones.

Daubert v. Merrell Dow Pharmaceuticals. In June 1993, the U.S. Supreme Court struck a blow against use of "junk science" in the courtroom, ruling that judges must exclude expert scientific testimony from reaching a jury unless that evidence is generally accepted within the scientific community. The result of the decision was to throw out the thousands of suits that alleged that the drug Bendectin causes birth defects; lower courts have agreed that the evidence used to establish such a link was nothing more than "junk science." The decision was a victory for WLF, which filed a brief in the case arguing that allowing juries to consider scientific evidence that is rejected by the majority of scientists undermines the role of the courts as truth-finding institutions.

Petition Urging Balanced Study of Silicone Implants. On January 20, 1992, WLF filed a petition with Secretary of Health and Human Services Louis Sullivan, urging him to convene an unbiased panel of health experts to review the data on silicone breast implants. WLF argued that FDA had mishandled the issue, noting that FDA's unwarranted restrictions on silicone implants had provided the impetus for an unprecedented wave of product liability suits against implant manufacturers. WLF argued that FDA Commissioner David Kessler acted without statutory authority and used biased, "junk" science in making decisions on the issue. WLF was ultimately vindicated when later studies showed that FDA's concerns were totally unfounded.

In re Dow Corning Corp. On November 22, 2000, WLF scored a victory when the U.S. District Court for the Eastern District of Michigan overturned a ruling by a bankruptcy court

invalidating a third-party release of liability in a bankruptcy settlement. Under the settlement, which reorganized Dow Corning Corporation in the face of numerous product-liability claims for silicone breast implants, Dow Corning's parent companies, Dow Chemical Company and Corning, Inc., were released from future tort claims. Instead, claimants receive compensation out of the settlement fund. WLF maintained in its brief filed in March 2000 that such a release is permissible under the bankruptcy code and would put an end to the quagmire of litigation surrounding this case. Moreover, WLF noted, the vast majority of tort claimants, along with Dow Corning, Dow Chemical, and Corning, supported the plan, which the bankruptcy court's decision threatened to unravel.

F. Preemption of Medical Device Suits

Federal law provides certain special protections to medical device manufacturers. In particular, once FDA has determined that a medical device is safe and effective for its intended use, a state court may not reach a contrary conclusion in connection with a tort suit alleging that the device is defectively designed. WLF has gone to court repeatedly to support a broad interpretation of the federal law that requires "preemption" of contrary state laws and court judgments. The Supreme Court significantly cut back on the extent of preemption in *Medtronic, Inc. v. Lohr*, but its later decision in *Buckman Co. v. Plaintiffs' Legal Committee* restored a fair degree of the protection previously afforded to device manufacturers. WLF continues to litigate against plaintiffs' efforts to circumvent the *Buckman* decision.

Medtronic, Inc. v. Lohr. On June 26, 1995, the U.S. Supreme Court ruled 5-4 against WLF in this important product liability case when it found that state tort claims against medical device manufacturers are not preempted by federal law. A federal statute provides that if a medical device is subject to regulation by FDA, it may not also be subjected to state law "requirements." The lower courts had been split on whether tort claims qualify as "requirements" imposed by state law; the Supreme Court held that they generally do not so qualify, albeit the Court left the door open to preempting tort claims in some limited contexts. WLF had argued in its brief that federal regulation of medical device design, manufacture, and marketing is sufficient to ensure that medical devices are safe, and that additional regulation at the state level discourages development of new and useful medical devices.

Buckman Co. v. Plaintiffs' Legal Committee. On February 21, 2001, the U.S. Supreme Court ruled that plaintiffs' lawyers may not second-guess FDA product approval decisions by filing state-law suits against the product manufacturer. The decision was a victory for WLF, which had filed a brief with the Court arguing that federal law does not permit such challenges because they would undermine FDA's authority to regulate the pharmaceutical industry. The suits here were product liability claims against the manufacturers of orthopedic screws used in spinal surgery; the plaintiffs asserted that the screws never should have been permitted on the market and that FDA approved marketing only because manufacturers defrauded the FDA in connection with their product-approval applications. The Court agreed with WLF that because FDA has stood by its decision to permit marketing of the screws, federal law prohibits plaintiffs from filing state-law tort actions that in essence second-guess FDA's approval.

U.S. ex rel. Gilligan v. Medtronic, Inc. On April 6, 2005, the U.S. Court of Appeals for the Sixth Circuit in Cincinnati dismissed a lawsuit that sought to second-guess decisions of the Food and Drug Administration (FDA) authorizing the sale of drugs or medical devices. The decision was a victory for WLF, which filed a brief in support of the manufacturer whose product was being challenged. WLF argued that permitting such suits to go forward would undermine the integrity of FDA's product-approval system and could result in patients being denied access to life-saving medical products. Although it dismissed the lawsuit, the Sixth Circuit did so on narrower grounds than WLF had argued. The plaintiffs were suing under the False Claims Act (FCA), a federal law that permits bounty-hunting private citizens to file a suit in the name of the federal government against anyone who makes a "false claim" to the government. They alleged that the defendant, a medical device manufacturer, induced health care providers to falsely claim that the manufacturer's products had been properly approved by FDA. The Sixth Circuit held that the information on which the plaintiffs based their lawsuit was publicly available before they filed suit. The appeals court held that under those circumstances, the FCA suit was barred by the "public disclosure" bar, which eliminates federal court jurisdiction over an FCA claim where the plaintiff is not the original source of the allegations. On January 9, 2006, the U.S. Supreme Court denied a petition to review the Sixth Circuit's decision, thereby sealing WLF's victory.

Reeves v. Acromed. On February 10, 1995, the U.S. Court of Appeals for the Fifth Circuit in New Orleans ruled that state-law suits claiming injuries caused by alleged defects in FDA-approved medical devices are impermissible because they are preempted by federal law, at least when the suits are premised on a failure-to-warn claim. The decision was a victory for WLF, which had filed a brief in the case in 1994 urging that the tort claims be dismissed on preemption grounds. WLF argued that federal regulation of medical device design and marketing is sufficient to ensure that medical devices are safe, and that additional regulation at the state level discourages development of new and useful medical devices.

Smith & Nephew Dyonics, Inc. v. Violette. On August 1, 1995, the U.S. Court of Appeals for the First Circuit affirmed a tort judgment for a plaintiff who claimed he was not warned about the dangers of a medical device despite the manufacturer's compliance with FDA's strict labeling requirements. WLF had urged the court to rule that state-law suits claiming injuries caused by alleged defects in FDA-approved medical devices are impermissible because they are preempted by federal law. The device at issue was the ECTRA System, used by physicians in performing wrist surgery. The court declined to rule on WLF's preemption argument; it held that the manufacturer had waived that argument by failing to raise it in the trial court.

Feldt v. Mentor. On August 21, 1995, the U.S. Court of Appeals for the Fifth Circuit ruled that most state-law product liability claims brought against a medical device manufacturer are preempted by federal law. The court held that because FDA already closely regulates medical devices, additional state regulation in the form of tort liability is unwarranted -- except for claims that the device is defectively designed. The decision was a victory for WLF, which had filed a brief urging dismissal of the claims. WLF successfully argued that preemption occurs even when, as here, the medical device in question is being marketed pursuant to an FDA § 510(k) "substantial equivalence" finding, rather than pursuant to the more rigorous pre-market approval process. WLF argued that in the absence of such preemption, development of new and useful medical devices would be stifled.

English v. Mentor. On September 29, 1995, the U.S. Court of Appeals for the Third Circuit ruled that most state-law claims against a medical device manufacturer are preempted by federal law. The decision was a victory for WLF, which had filed a brief supporting the district court's dismissal of the plaintiffs' product liability claims. The plaintiffs sought damages under theories of strict liability, negligent design, and breach of express and implied warranties of merchantability because the plaintiffs' prosthesis began malfunctioning. The only claim that the appeals court held was not preempted was that the manufacturer breached express warranties regarding the performance of its product.

Rosci v. Acromed. On December 19, 1995, a Pennsylvania court handed WLF a partial victory in a products liability action. The court ruled that some, but not all, state tort claims against medical device manufacturers are preempted by federal law. WLF had filed a brief in the case, urging the Superior Court of Pennsylvania to affirm a lower court's dismissal of the plaintiff's claim that a device manufacturer violated express and implied warranties when its bone plates and screws, which were inserted into the plaintiff's back, did not produce the results desired by the plaintiff. WLF argued that federal law preempted the plaintiff's state-law claims. The court ruled that federal law preempts breach of warranty claims where the warranty is one implied by state law, but does not preempt claims that the manufacturer breached a warranty it expressly made at the time of sale.

Guidance Document on Medical Devices Preemption. WLF achieved a major victory in July 1998, when FDA agreed to withdraw a proposed guidance document regarding when federal law preempts state tort lawsuits against medical device manufacturers. In February 1998, WLF had filed comments urging that the proposed guidance be withdrawn. In *Medtronic, Inc. v. Lohr*, the Supreme Court ruled that federal law operates to preempt at least some state tort suits against device manufacturers. Despite that decision, FDA's proposed guidance declared that state tort suits are virtually never preempted by the relevant federal statutes. WLF argued that the FDA guidance document was directly contrary to the plain language of the federal statutes and flouted the *Medtronic* decision.

G. Protecting Patent Rights

If advances in health care are to continue, it is vital that research-based pharmaceutical companies that develop new drugs and medical devices be afforded a substantial period of exclusivity, during which potential competitors are not permitted to market the same product. When it adopted the Hatch-Waxman Act in 1984, Congress carefully balanced the need, on the one hand, for a strong patent system that rewards companies that develop new therapies and, on the other hand, for the competition among manufacturers that provides lower prices for consumers. Numerous politicians have been pushing the courts to upset that balance by abridging patent rights created by Hatch-Waxman. WLF has vigorously opposed such efforts, going to court repeatedly to support those rights.

Purdue Pharma L.P. v. Endo Pharmaceuticals, Inc. On February 1, 2006, the U.S. Court of Appeals for the Federal Circuit reversed its earlier decision to invalidate a multi-billion dollar pharmaceutical patent, and remanded the case to the district court to consider the invalidity issue

anew. The decision was a major victory for WLF, which filed a brief in June 2005, urging the three-judge appeals court panel to reverse its prior decision. Particularly gratifying to WLF was that the panel reversed itself based on the precise arguments raised by WLF in its brief. The case now returns to the U.S. District Court for the Southern District of New York for reconsideration of the patent invalidity issue. Based on guidance provided by the appeals court regarding how the issue should be resolved, it was likely that the district court will ultimately uphold the patent. The patent at issue covers OxyContin, a powerful pain relief medication. A federal district court ruled in 2004 (and the appeals court panel affirmed in June 2005) that the patent should be invalidated as a penalty for alleged “inequitable conduct” committed by the drug’s manufacturer when applying to the Patent and Trademark Office (PTO) for the patent. A patent can be invalidated on those grounds only upon a showing that the applicant omitted “material” information from its patent application and did so intending to deceive the PTO. WLF argued (and the latest appeals court decision largely agreed) that the district court improperly lowered the bar for demonstrating inequitable conduct by applying far too lax standards for intent. WLF argued that any information withheld in this case was trivial and that there was no evidence that the manufacturer intended to deceive the PTO.

Mylan Pharmaceuticals, Inc. v. Thompson. On October 12, 2001, the U.S. Court of Appeals for the Federal Circuit ruled that those challenging patents held by pharmaceutical companies are not permitted to circumvent the procedural protections that Congress granted to patent holders when it adopted the Hatch-Waxman Act in 1984. The ruling was a victory for WLF, which on April 20, 2001, had filed a brief urging that the procedural rights of patent holders be upheld. The court agreed with WLF that those challenging patents should be required to raise their claims in connection with the normal procedures established for such challenges; they should not be permitted to circumvent those procedures with novel legal claims, such as suits challenging a drug company’s decision to list a patent in the “Orange Book” maintained by FDA. WLF also argued that undermining the patent rights of drug manufacturers inevitably will slow development of new, life-saving therapies by reducing financial incentives for research spending.

SmithKline Beecham Corp. v. Apotex Corp. On June 19, 2006, the U.S. Supreme Court issued an order declining to review an appeals court decision that invalidated a significant pharmaceutical patent based on a finding that the drug was not “novel” when the patent application was filed in 1986 – even though it is undisputed that if the drug existed before then, it was in such minute quantities as to be undetectable. The order, issued without comment, was a setback for WLF, which filed a brief urging that review be granted. WLF argued that if allowed to stand, the decision of the U.S. Court of Appeals for the Federal Circuit would undermine confidence in the nation’s patent system as an effective means of protecting intellectual property rights. WLF argued that under the doctrine of “accidental prior use,” an invention should not be deemed to have been “anticipated” by the prior art if the prior art’s disclosure of the claimed invention is accidental or unwitting and no one – not even experts in the field – would have recognized the existence of the disclosure. WLF argued that the challenged patent should have been upheld under the “accidental prior use” doctrine. WLF also filed briefs in the case – supporting the validity of the underlying patent – in the Federal Circuit in 2004 and 2005.

Allergan, Inc. v. Alcon Laboratories. On December 1, 2003, the U.S. Supreme Court declined to review an appeals court decision that barred a pharmaceutical company from seeking

recourse in the courts as soon as one of its patents is threatened by a generic drug company's announced plan to market a generic version of the drug covered by the patent. The decision was a setback for WLF, which on October 24, 2003 had filed a brief urging the Court to grant review. WLF also filed two briefs in 2002/2003 when the case was in the appeals court. The Court's order provided no explanation for its decision to deny review. In its brief urging Supreme Court review, WLF argued that permitting early resolution of patent disputes between pioneer and generic drug companies was one of Congress's principal purposes in adopting the Hatch-Waxman Act in 1984. WLF argued that the lower courts' decision dismissing the pioneer company's claim on ripeness grounds undermines congressional intent and ought to be reversed.

Pfizer, Inc. v. Dr. Reddy's Laboratories, Inc. On February 27, 2004, the U.S. Court of Appeals for the Federal Circuit (in a victory for WLF) overturned a district court decision that threatened to cut short patent rights granted to pharmaceutical companies under the Hatch-Waxman Act. The appeals court rejected the district court's rationale, under which generic companies would have had little difficulty avoiding patent infringement actions by merely altering one of the inactive ingredients of the patented product. The appeals court agreed with WLF's argument that by assigning too restrictive a definition of what constitutes the chemical substance protected by a patent, the district court undermined patent rights and thereby significantly reduced the economic incentives for companies to invest the vast sums necessary to develop new life-saving products. The district court had held that a generic drug does not infringe a product whose patent term has been extended under the Hatch-Waxman Act, so long as it is combined with an "addition salt" different from the one used in the patented drug – even if the generic drug includes the same active ingredient as the patented product.

Opposition to Activist Petition Threatening Patent Rights. The National Institutes of Health (NIH) announced on September 17, 2004, that it would not grant a "march-in" petition from an activist group seeking to abrogate the exclusivity of patent rights held by a pharmaceutical company. The petition, filed by a group called Essential Inventions, argued that federal law gives federal agencies the authority to regulate the prices of products that are based on technology wholly or partly funded by federal grants and licensed to the private sector. NIH's decision was a victory for WLF, which had filed comments on August 9, 2004, urging NIH to deny the petition. The Essential Inventions petition claimed that Pfizer had set excessive prices for its glaucoma drug Xalatan by charging more for the drug in the U.S. than overseas. The petition argued that the march-in provision of the Bayh-Dole Act could be invoked based on a licensee's decision to set "unreasonable" prices for a product. WLF's response analyzed the Act and its legislative history to show that the Act was never intended to serve as a price-control law.

Revision of Hatch-Waxman Act Regulations. On December 23, 2002, WLF wrote to FDA, generally supporting the agency's proposed revision of rules implementing the Hatch-Waxman Act's procedures for resolving patent disputes between pioneer and generic drug manufacturers. WLF agreed with FDA that, in order to prevent pioneer manufacturers from abusing Hatch-Waxman procedures in an effort to delay entry of generic competition, they should be allowed to invoke the Act's 30-month stay provision only once in connection with a single Abbreviated New Drug Application (ANDA). However, WLF contended that FDA's proposed rule goes too far in this regard. FDA proposes that a pioneer manufacturer's sole opportunity to invoke the 30-month stay should arise only in the period immediately following the *first* occasion

on which a generic company has filed a "Paragraph IV Certification" in connection with its ANDA. WLF argued that FDA's proposal is based on a misreading of the relevant statute; pioneer manufacturers should not be deemed to have waived the stay if they do not deem it necessary to file an infringement suit in response to the generic company's first Paragraph IV Certification. Rather, WLF argued, the 30-month stay should not be triggered until the pioneer manufacturer has filed a patent infringement lawsuit. On June 18, 2003, FDA adopted final regulations in substantially the same form as it had proposed in December 2002.

Proposed Rulemaking to Implement Pediatric Exclusivity Laws. On January 28, 2002, WLF petitioned FDA to initiate a rulemaking proceeding to implement the pediatric exclusivity provisions of the newly enacted Best Pharmaceuticals for Children Act (BPCA). The BPCA authorizes FDA to approve a marketing application from a generic drug manufacturer even when the brand-name manufacturer still holds exclusive rights to market the drug to children. WLF argued that allowing generic drugs to be marketed without any sort of pediatric labeling raises serious health concerns. WLF argued that, in general, generic manufacturers should be required to purchase a license from the brand-name manufacturer that would allow them to include pediatric labeling on their products.

H. Misuse of Antitrust Law

When the government grants a limited-time patent to the inventor of a product, it recognizes that the antitrust laws (which normally operate to prohibit all "restraints of trade") are generally inapplicable to the actions of the patent holder. Nonetheless, plaintiffs' lawyers with increasing frequency have been filing antitrust claims against patent holders and those who enter into marketing agreements with patent holders – thereby threatening the viability of the patent system. WLF has regularly litigated in the federal courts against those who would use the antitrust laws to limit the rights of patent holders – rights that are essential if research and development are to be encouraged.

Schering-Plough Corp. v. FTC. On March 8, 2005, the U.S. Court of Appeals for the Eleventh Circuit overturned an FTC decision that would have imposed antitrust liability on two drug companies based on the settlement of a patent dispute. WLF had filed a brief on June 9, 2004, encouraging the court to overturn the FTC's ruling. The settlement agreements (between Schering-Plough Corp., Upshur-Smith, and American Home Products) settled a dispute involving generic drug companies who wished to manufacture a drug for which Schering-Plough claimed patent rights. The FTC held that the settlement unreasonably restrained trade because the generic companies agreed to delay their entry into the market. In its brief, WLF argued that the FTC's view of patent settlements between drug companies is commercially unrealistic and counter to federal antitrust law. WLF further argued that the FTC's position would deter settlement of patent disputes. WLF also filed a brief when the matter was before the FTC. In August 2005, the FTC filed a petition for certiorari with the Supreme Court seeking review of the Eleventh Circuit decision. Interestingly, the U.S. Department of Justice has filed a brief urging that the Court *reject* the FTC's petition.

Valley Drug Co. v. Geneva Pharmaceuticals. On September 15, 2003, the U.S. Court of Appeals for the Eleventh Circuit in Atlanta rejected claims that agreements to settle patent disputes

can amount to *per se* violations of the antitrust laws. The decision was a victory for WLF, which filed a brief in the case urging against blanket condemnation of such agreements. The appeals court explained that patents are intended to provide holders with the power to exclude competition; the court agreed with WLF that agreements that settle patent disputes by simply confirming patent holders' power to exclude do not violate the antitrust laws. The appeals court reversed a district court decision that had condemned a patent settlement as a *per se* antitrust violation. The case involves the settlement of a patent dispute between Abbott Laboratories (which held a patent to manufacture the drug Hytrin) and several companies that wished to manufacture generic equivalents of Hytrin. Under the settlement, the generic manufacturers agreed to delay their entry into the field. The court agreed with WLF that the antitrust analysis was unchanged by the fact that Abbott paid money to the generic companies in connection with the settlement. In October 2004, the U.S. Supreme Court declined a petition to review the Eleventh Circuit's decision.

Andrx Pharmaceuticals, Inc. v. Kroger Co. On October 12, 2004, the U.S. Supreme Court declined to review a lower-court ruling that agreements to settle patent disputes can amount to *per se* violations of the antitrust laws. The decision not to hear the case was a setback for WLF, which filed a brief in the case, urging that review be granted. WLF argued that parties ought to be encouraged to settle their patent disputes. By raising the possibility that settlements will be subjected to *per se* condemnation under the antitrust laws, the federal appeals court in Cincinnati is unnecessarily discouraging settlements, WLF argued. The case involves the settlement of a patent dispute between Hoechst Marion Roussel (which held a patent to manufacture the drug Cardizem CD) and a generic drug manufacturer, Andrx Pharmaceuticals, which had announced plans to market a generic version of Cardizem CD. Under the settlement, Andrx agreed to delay its entry into the field. The plaintiffs, purchasers of Cardizem CD, allege that the settlement constituted an unreasonable restraint of trade in violation of antitrust laws. WLF argued that litigation settlements often have significant procompetitive effects and thus that they ought to be judged under the "rule of reason" rather than being condemned as *per se* illegal in all cases.

II. CIVIC COMMUNICATION

WLF recognizes that its litigation and regulatory activities cannot alone suffice if it is to have a significant impact in shaping the nation's healthcare policy. WLF has also sought to influence public debate and provide information through its Civic Communications Program. This targeted and broad-based program features WLF's sponsorship of frequent, well-attended media briefings featuring experts on a wide range of health-related topics, web seminars featuring analysis and commentary by noted legal experts on timely developments in law and public policy, the publication of advocacy advertisements in national journals and newspapers, and participation in countless healthcare symposia. WLF supplements these efforts by making its attorneys available on a regular basis to members of the news media – from reporters for general-circulation newspapers to writers for specialized FDA journals.

A. Media Briefings

The centerpiece of WLF's Civic Communications Program is its media briefings, which bring news reporters from the print and electronic media together with leading experts on a wide variety of legal topics. WLF sponsors more than a dozen such breakfast briefings each year, often focusing on health-related topics. Recent media briefings (dubbed media "noshes") on health-related issues have included the following:

"Authorized" Generic Drugs: What Impact on Health Care Competition and Innovation?, May 17, 2006

- Michael S. Wroblewski, Federal Trade Commission
- David A. Balto, Robins, Kaplan, Miller & Ciresi L.L.P.
- Christopher J. Kelly, Mayer, Brown, Rowe & Maw LLP

FDA's Federal Preemption Policy: Implications for Drug Labeling and Product Liability Litigation, March 8, 2006

- Daniel E. Troy, Sidley Austin LLP
- Mark S. Brown, King & Spalding LLP

Scrutiny of Medical Education Grants: A Chilling Wind for Doctors and Patients?, February 9, 2006

- Jeffrey N. Gibbs, Hyman, Phelps & McNamara, P.C.
- Steven E. Irizarry, ML Strategies
- Laura Frick Laemmle, Patton Boggs LLP

Regulating Drug Promotion: Assessing a Tumultuous 2005 and Prospects for the New Year, December 13, 2005

- David Bloch, Reed Smith
- Adonis Hoffman, American Association of Advertising Agencies
- Richard A. Samp, Washington Legal Foundation

Hospital-Physician "Gainsharing": Legal and Healthcare Implications for Patients, Providers, and Product Producers, May 25, 2005

- David Nexon, AdvaMed
- D. McCarty Thornton, Sonnenschein Nath & Rosenthal LLP
- William T. Mathias, Ober Kaler

Cold Medicines and Meth: What is the Right Approach to Curbing Illegal Use of OTC Drugs?, May 18, 2005

- The Honorable Dennis C. Vacco, Crane & Vacco
- James R. Phelps, Hyman, Phelps & McNamara, P.C.

Drug "Reimportation:" A Prescription To Put U.S. Biotech and Pharma On Life Support?, June 15, 2004

- David M. McIntosh, Mayer, Brown, Rowe & Maw LLP
- Thomas J. McGinnis, R.Ph., Food & Drug Administration
- Jayson S. Slotnik, Biotechnology Industry Organization

"Off Label" Communications At Risk: Promoting Prescription Drugs in an Uncertain Legal Environment, February 3, 2004

- John F. Kamp, Wiley, Rein & Fielding
- Stephen Paul Mahinka, Morgan Lewis LLP
- Richard A. Samp, Washington Legal Foundation

From Prescription to "OTC": The Legal and Policy Issues FDA Would Face on Forcing a Switch, June 17, 2003

- Andrew S. Krulwich, Wiley, Rein & Fielding
- Linda F. Golodner, National Consumers League
- Nathan A. Beaver, McDermott, Will & Emery

Defending Against Bio-Terrorism: Legal Policy Challenges For Government And Private Industry, April 22, 2003

- Dr. Ken Alibek, George Mason University
- Christine Grant, Aventis Pasteur
- Frank M. Rapoport, McKenna Long & Aldridge LLP

Free Speech & Public Health: FDA, Congress, and the Future of Food and Drug Promotion, May 30, 2002

- John E. Calfee, American Enterprise Institute
- Richard L. Frank, Olsson, Frank & Weeda
- Sandra J. P. Dennis, Morgan Lewis LLP

Drug Patent and Pricing Litigation: Will it Help or Hinder Health Care?, March 13, 2002

- James M. Spears, Ropes & Gray
- Daniel A. Small, Cohen, Millstein, Hausfeld & Toll
- Elizabeth A. Leff, Rothwell, Figg, Ernst & Manbeck
- Jeffrey D. Pariser, Common Good

Priorities for the New FDA Commissioner, October 3, 2001

- Alan Slobodin, House Energy and Commerce Committee
- John W. Bode, Olsson, Frank & Weeda
- Larry R. Pilot, McKenna Long & Aldridge

Drug Pricing and Intellectual Property: Will Government Intervention Help or Hinder Health Care?, May 2, 2001

- Willard K. Tom, Morgan, Morgan & Lewis
- Robert Goldbergh, Ph.D., National Center for Policy Analysis
- Frank M. Rapoport, McKenna Long & Aldridge
- Michie I. Hunt, Ph.D., Michie I. Hunt & Associates

Biotech Foods after the StarLink Corn Recall: Is More Federal Regulation Needed?, November 14, 2000

- Dr. Lester M. Crawford, Georgetown University Center for Food and Nutrition Policy
- Gregory Conko, Competitive Enterprise Institute
- Edward L. Korwek, Hogan & Hartson L.L.P.

Washington Legal Foundation v. Henney: The Appeals Court's Ruling and FDA's Curious Response on Off-label Promotion, March 22, 2000

- Bert W. Rein, Wiley, Rein & Fielding
- Robert A. Dormer, Hyman, Phelps & McNamara
- Richard A. Samp, Washington Legal Foundation

WLF v. Henney: What's Next And What Impact on FDA and Off-label Promotion?, August 18, 1999

- Daniel E. Troy, Food & Drug Administration
- George S. Burditt, Bell, Boyd & Lloyd
- Howard Cohen, Greenberg Traurig

Regulating Off-label Drug Promotion: Impact of WLF v. Friedman and FDAMA, March 3, 1999

- Richard A. Samp, Washington Legal Foundation
- James W. Hawkins, III, Bergner Bockorny, Inc.
- Alan R. Bennett, Ropes & Gray

B. Web Seminars

WLF inaugurated its *Web Seminar Series* in 2005. Web Seminars present viewers with live webcast analysis and commentary by noted legal experts on timely developments in law and public policy. These hour-long presentations are also conveniently archived and available on WLF's website. The speakers for the programs, who provide their insights on a *pro bono* basis, are leading experts in the field of law to be discussed. Recent web seminars on health-related issues have included the following:

Incentivizing Whistleblower Litigation: Ramifications for Health Care Contractors as False Claims Laws Spread in the States, April 27, 2006

- John T. Boese, Fried Frank Harris Shriver & Jacobson LLP
- Beth C. McClain, Fried Frank Harris Shriver & Jacobson LLP

Abigail Alliance v. Crawford: Litigating Access Rights to Lifesaving Medicine, October 24, 2005

- J. Scott Ballenger, Latham & Watkins LLP
- David Price, Washington Legal Foundation

Reuse of Medical Devices: Issues in Federal Policy, October 18, 2005

- James D. Miller, King & Spalding LLP
- Pamela J. Furman, Olsson, Frank and Weeda, P.C.

C. Advocacy Ads

In 1998, WLF began running a series of opinion editorials on the op-ed page of the national edition of *The New York Times* called "In All Fairness." The op-ed has appeared over 100 times, reaching over five million readers in 70 major markets and 90 percent of major newspaper editors. Healthcare policy and FDA regulation has been the focus of a number of "In All Fairness" columns:

•***Bureaucrats Practicing Medicine***, April 24, 2004 (Government efforts to limit and regulate health care causes substandard medical care for patients and can even be life-threatening.)

•***Why We're Suing HHS***, October 14, 2003 (Two agencies within HHS are keeping gravely ill Americans from getting lifesaving medicines, and unfortunately litigation is required to fight for their rights.)

•***Who's Tampering with Your Medicines?***, June 30, 2003 (Development of new medicines is harmed by trial lawyers who file novel lawsuits against drug companies and by government preferences of generic and over-the-counter drugs.)

•***A New FDA?***, December 16, 2002 (FDA should expedite its drug approval procedures to improve public health and stop micromanaging drug advertising.)

•***Bring Accountability to FDA***, August 6, 2001 (Excessive FDA enforcement and misguided regulatory policies harm the health of Americans.)

•***Phony Food Safety Scares***, November 20, 2000 (Professional activists whip up public hysteria with phony allegations aimed at genetically modified food, pesticides, and food irradiation, when in fact these technological tools hold the potential for cheaper, safer, more abundant food.)

•*Bad Medicine for Consumers*, June 21, 2000 (Price controls should not be placed on drugs because the free market, not a new bureaucracy, is most suited to determining how much drugs ought to cost and because price controls stifle innovation.)

•*The World According to FDA*, September 27, 1999 (FDA's policy to regulate the dissemination of publications describing off-label use of FDA-approved drugs harms the health of Americans and violates the First Amendment.)

•*Pound-Foolish Public Policy*, June 21, 1999 (Price controls on products such as prescription drugs are counterproductive and undermine the free market system.)

These and other "In All Fairness" columns can be accessed from WLF's comprehensive website, www.wlf.org.

In addition to its high-profile "In All Fairness" series, WLF also creates and places advocacy ads in national newspapers and periodicals to focus the public's attention on important legal issues.

When 1994 studies showed that FDA's delays had led to a record backlog of products awaiting approval, WLF sought to publicize those delays by launching a major public relations campaign that featured six different advertisements in the national editions of the *Wall Street Journal*, *USA Today*, *Washington Post*, *The New York Times*, and *National Journal*. The advertisements were widely praised for their effectiveness, each winning a prestigious Addy Award in 1995. WLF's work was widely credited with forcing FDA to streamline its product approval process and also brought the issue to the attention of major decision makers in government. Congress subsequently adopted major reform legislation in 1997.

D. Public Appearances

WLF attorneys have appeared as featured panelists and speakers on health care issues before such groups as the Food and Drug Administration, the Federal Trade Commission, the Food and Drug Law Institute, the American Medical Association, the North American Spine Society, the Regulatory Affairs Professional Society, the Federalist Society, the Heritage Foundation, the American Bar Association, the Pharmaceutical Research and Manufacturers of America, and Medical Alley. What follows are highlights of the numerous public appearances that WLF attorneys have made in the past 12 years, to address health-related issues:

June 6, 2006, WLF Chief Counsel Richard Samp was a featured speaker on a teleconference sponsored by Mealey's, regarding FDA's recently announced policy regarding federal preemption of state-law failure-to-warn tort suits against pharmaceutical manufacturers and health practitioners.

March 30, 2006, Samp was a featured panelist at the Medical Device Regulatory and Compliance Congress, held at Harvard University; Samp discussed manufacturers' First Amendment rights to speak truthfully about FDA-approved medical products.

December 14, 2005, Samp was the keynote speaker at a breakfast symposium in Minneapolis sponsored by Medical Alley and MNBIO. Samp's speech focused on recent federal government enforcement actions under the False Claims Act and the anti-kickback statute.

December 6, 2005, Samp was a featured panelist at the Food and Drug Law Institute's Fourth Annual Enforcement and Litigation Conference in Washington, D.C. Samp spoke on the federal government's efforts to obtain restitution/disgorgement as a remedy for violations of the Federal Food, Drug, and Cosmetic Act.

November 2, 2005, Samp testified before an FDA panel in support of expanding the rights of pharmaceutical companies to engage in direct-to-consumer advertising.

May 11, 2005, Samp was a featured speaker at a seminar in New York City sponsored by Harvard Business School Publishing. Samp spoke on the corporate community's First Amendment rights to speak out on issues of public importance, particularly on health care issues.

January 27, 2005, Samp was a featured speaker at a conference organized by the Food & Drug Law Institute in Washington, D.C. entitled, "Product Liability for FDA Regulated Products: In What Kind of World Are We Living?" Samp addressed potential pitfalls to manufacturers created by the federal False Claims Act.

June 10, 2004, WLF Senior Vice President David Price was a panelist at a forum sponsored by the Cato Institute, together with volunteers from WLF's client, the Abigail Alliance for Better Access to Developmental Drugs. Price discussed WLF's lawsuit on behalf of itself and the Abigail Alliance against the FDA seeking earlier availability of investigational drugs for the terminally ill.

January 23, 2004, Samp was a featured speaker at the annual meeting in Atlanta of NAAMECC (a trade group for companies that produce continuing medical education symposia), warning against government restrictions on the First Amendment right to speak truthfully regarding medical issues.

November 20, 2003, Samp addressed the American Bar Association's annual pharmaceutical conference in Philadelphia, arguing that expanded use of the False Claims Act as a vehicle for suing drug companies is jeopardizing free speech rights and the ability of drug company's to continue to develop new, life-saving therapies.

November 8, 2003, Samp addressed the annual meeting of the Society for Academic Continuing Medical Education in Washington, arguing that proposed restrictions on who may speak at Continuing Medical Education events are far too restrictive.

September 25, 2003, Samp spoke in Washington, DC at a symposium organized by Pharmaceutical Education Associates, on the right to enforce drug patents that cover off-label uses of FDA-approved drugs.

September 9, 2003, Samp addressed the American Medical Association's National Task Force on Continuing Medical Education (CME) in Chicago; Samp argued that proposed restrictions on who can speak at CME gatherings violate First Amendment norms.

May 13, 2003, WLF Chairman and General Counsel Daniel J. Popeo was the keynote speaker at the Ventura County Medical Society's membership meeting in Oxnard, California. Popeo's speech was titled, "What You Can Do About Lawyers: The Future of Tort Reform and the Role that Doctors Must Play."

April 23 and again June 26, 2003, Samp appeared on CNBC to discuss *Nike v. Kasky*, the Supreme Court case that addressed the First Amendment right of corporations to freely discuss matters of public interest.

October 25, 2002, Samp was a featured panelist at a symposium organized by the Federalist Society, entitled, "FDA and the First Amendment."

October 7, 2002, Samp was a panelist at the annual conference of the Regulatory Affairs Professional Society in Washington, D.C., speaking on "The First Amendment and FDA Regulation."

September 11, 2002, Samp spoke at the Food and Drug Law Institute's ("FDLI") annual conference in Washington, regarding First Amendment constraints on FDA regulation of speech by pharmaceutical companies.

September 10, 2002, Samp testified before the Federal Trade Commission in connection with the FTC's hearings on "Health Care and Competition."

September 10, 2002, Samp spoke at the annual conference of the National Task Force on CME Provider/Industry Collaboration in Baltimore, on the topic of whether CME (Continuing Medical Education) should be subject to FDA regulation.

August 1, 2002, Samp was a featured panelist in an audio conference sponsored by FDLI on "First Amendment Issues Facing the Food and Drug Administration."

May 22, 2002, Popeo was the featured speaker at the Annual Meeting of the Medical Device Manufacturers Association (MDMA). At the MDMA Chairman's Luncheon, Popeo discussed the crucial work of WLF in promoting open markets, free enterprise, and competition, and WLF's legal activities challenging excessive regulation by FDA.

October 10, 2001, Samp appeared on a program sponsored by Maine Public Radio regarding the propriety of States' efforts to impose price controls on prescription drugs.

May 18, 2001, Samp spoke at a luncheon of the Philadelphia chapter of the Federalist Society, regarding FDA regulation of manufacturer speech.

April 20, 2000, Samp was a featured panelist at a New York City symposium sponsored by the Federalist Society, entitled, "The Future of Commercial Speech."

April 6, 2000, Samp addressed a symposium in Washington, D.C. sponsored by the Drug Information Association, regarding "Promoting, Prescribing, and Paying for Off-Label Indications."

September 28, 1999, Samp was interviewed on ABC Radio regarding *Pegram v. Herdich*, a Supreme Court case in which a patient sought to sue her HMO under ERISA (the federal pension law) because the HMO took steps to reduce medical treatment costs.

September 13, 1999, Samp was a panelist at the FDLI's annual conference, discussing First Amendment restrictions on FDA regulation.

August 25, 1999, Samp was the keynote speaker at the annual meeting of the Indiana Medical Device Manufacturers Association in Indianapolis, where he discussed WLF's successful challenge to FDA speech restrictions.

June 29, 1999, Samp addressed an FDLI conference regarding manufacturer dissemination of peer-reviewed journal articles that discuss off-label uses of FDA-approved products.

May 20, 1999, Samp addressed an FDLI conference regarding WLF's First Amendment victory over the FDA in *WLF v. Henney*.

January 28, 1999, Samp addressed the Food, Drug, and Cosmetics law section of the New York Bar Association on WLF's victory in *WLF v. Henney*.

January 13, 1999, WLF Legal Studies Division Chief Glenn Lammi provided educational commentary on the *WLF v. Henney* case to a group of pharmaceutical marketers at a Center for Business Intelligence seminar.

September 10, 1998, Samp addressed a FDLI symposium, to discuss WLF's court victories over FDA on First Amendment issues.

August 19, 1997, WLF Executive Legal Director Paul Kamenar was featured on FOX 24 Hour News discussing the tort reform implications of a large silicone breast implant verdict by a Louisiana jury against Dow Chemical Company.

June 13, 1997, Kamenar was a featured speaker at the 6th Annual Conference on Biologics and Pharmaceuticals sponsored by International Business Communications, discussing WLF's First Amendment lawsuit against FDA.

April 9, 1997, Samp addressed a conference sponsored by the Drug Information Association in New Orleans, regarding efforts by FDA to suppress speech regarding off-label uses of approved drugs and medical devices.

November 25, 1996, Samp appeared on National Public Radio to discuss the resignation of FDA Commissioner David Kessler.

August 6, 1996, Samp spoke at the American Bar Association's annual convention in Orlando, Florida on the topic, "Is the FDA Really Reforming Itself?"

March 20, 1996, Popeo was a keynote speaker at a conference of the Healthcare Marketing & Communications Council in New York City discussing reform of FDA, WLF's litigation against FDA, and other related programs promoting commercial free speech.

December 7, 1995, Samp spoke to a group of pharmaceutical executives at a Rockville, Maryland forum sponsored by International Business Conferences, regarding WLF's continuing efforts to prevent FDA abuse of First Amendment rights.

December 7, 1995, Samp was a featured speaker (along with Rep. Joe Barton) at a forum sponsored by the Heritage Foundation entitled, "Is the FDA Killing America?"

November 16, 1995, Samp spoke in Philadelphia at a legal forum sponsored by Mealey's Publications regarding federal preemption of state tort claims against medical device manufacturers.

October 20, 1995, Samp addressed (along with U.S. Senator Bill Frist of Tennessee) a gathering of orthopedic surgeons at a symposium of the North American Spine Society on the need to streamline FDA.

October 18, 1995, Samp testified before an FDA panel, urging FDA to lift restrictions on direct-to-consumer advertising of prescription drugs.

September 20, 1995, Lammi spoke at a meeting of the Ad Hoc In-House Counsels Working Group, a group of attorneys for pharmaceutical companies, on FDA's restrictions on advertising and promotion.

September 19, 1995, Popeo served on the faculty at the American Medical Association's Sixth National Conference on Continuing Medical Education. Popeo discussed WLF's lawsuit against FDA regarding the suppression of medical literature discussing off-label uses of FDA-approved drugs and devices.

June 27, 1995, Kamenar was a featured speaker at an FDLI conference in Washington, D.C. He discussed WLF's FDA-reform project and its lawsuit against FDA for prohibiting the dissemination of information about off-label uses of approved drugs and devices.

June 16, 1995, Lammi appeared on National Empowerment Television to discuss FDA reform.

May 22, 1995, Kamenar debated U.S. Representative Don Wyden (D-Ore.) and Bruce Silverglade of the Center for Science in the Public Interest on "America's Talking" cable television network, regarding FDA reform.

March 13, 1995, Samp addressed the annual meeting of the Pharmaceutical Research and Manufacturers of America (PhRMA) on the need for reform of FDA.

January 31, 1995, Samp was a featured guest on the Diane Rehm Show (syndicated by WAMU-Radio in Washington, D.C.), debating the need for reform of FDA with Dr. Sidney Wolfe of the Public Citizen Health Research Group.

III. PUBLICATIONS

WLF's Legal Studies Division is the preeminent publisher of persuasive, expertly researched, and highly respected legal papers. They do more than inform the legal community and the public about issues vital to the fundamental rights of every American – they are the very substance that tips the scales in favor of those rights. WLF publishes in seven different formats, which range in length from concise LEGAL BACKGROUNDEERS covering current developments affecting the American legal system, to comprehensive MONOGRAPHS providing law-review-length inquiries into significant legal issues.

A large percentage of WLF publications have focused on health-related topics. WLF's recent health-related publications include the following:

New False Claims Law Incentives Pose Risks To Contractors And States

By **John T. Boese** and **Beth C. McClain**, a partner and a special counsel, respectively, to the law firm Fried, Frank, Harris, Shriver & Jacobson LLP in its Washington, D.C. office.
WORKING PAPER, June 2006, 16 pages

Multiple Sclerosis Patients v. FDA Overcaution

By **Lauren Roberts**, a multiple sclerosis patient living in California.
LEGAL OPINION LETTER, May 19, 2006, 2 pages

Health And Speech Rights At Risk from Attacks On Medical Education

By **Jeffrey N. Gibbs**, a principal with the law firm Hyman, Phelps & McNamara, P.C. in its Washington, D.C. office.
LEGAL BACKGROUNDER, April 7, 2006, 4 pages

Advertising And Preemption Under FDA's New Drug Labeling Rule

By **Tish E. Pahl**, a principal with Olsson, Frank and Weeda, P.C.
LEGAL OPINION LETTER, March 24, 2006, 2 pages

Quietly Expanding *Qui Tam*: Federal Law Encourages New State False Claims Acts

By **John T. Boese**, a partner in the Washington, D.C. office of the law firm Fried, Frank, Harris, Shriver & Jacobson LLP.
LEGAL OPINION LETTER, March 10, 2006, 2 pages

European Commission Paper On "Healthy Diets" Has Implications For Food Industry

By **Sarah A. Key**, an associate in the Washington D.C. office of Foley & Lardner LLP. She is a member of the Regulatory Department, its General Regulatory Practice Group, and the Food Industry and International Business Teams.
COUNSEL'S ADVISORY, March 10, 2006, 1 page

Don't Dilute Drug Approval Process With Non-Scientific Criteria

By **Gilbert L. Ross, M.D.**, the Executive Director and Medical Director of the American Council on Science and Health (ACSH), a consumer education-public health organization; and **Elizabeth M. Whelan, MPH, ScD**, President and founder of the American Council on Science and Health.
LEGAL OPINION LETTER, March 10, 2006, 2 pages

“Off-Label” Speech: Uncertainty Reigns For Device & Drug Makers

By **Ralph F. Hall**, Visiting Associate Professor of Law at the University of Minnesota Law School and Counsel to the law firm Baker & Daniels, Indianapolis, Indiana, and Washington D.C.
LEGAL BACKGROUNDER, December 2, 2005, 4 pages

Streamlining Appeals At FDA: A Modest Proposal

By **Donald E. Segal**, a partner in the Food, Drug and Device Group of the law firm Alston & Bird LLP, and **Sharon D. Brooks**, an associate in the firm’s Washington, D.C. office.
LEGAL BACKGROUNDER, November 4, 2005, 4 pages

Courts Scrutinize FDA “Disgorgement” Demands

By **Christine P. Bump**, an associate with the law firm Hyman, Phelps & McNamara, P.C.
LEGAL BACKGROUNDER, November 4, 2005, 4 pages

DOJ Prosecution Guidance Impacts Health Care Businesses

By **Karen Owen Dunlop**, a partner in the Chicago office of the law firm Sidley Austin Brown & Wood LLP.
LEGAL OPINION LETTER, August 26, 2005, 2 pages

FDA’s Unauthorized User Fee Money Grab

By **Robert A. Dormer**, a director, and **Kurt R. Karst**, an associate, at the Washington, D.C. law firm Hyman, Phelps & McNamara, P.C.
LEGAL BACKGROUNDER, August 12, 2005, 4 pages

Impact On Patient Care Must Be Factor When Assessing “Gainsharing” Arrangements

By **Bradley Merrill Thompson**, a partner in the law firm of Baker & Daniels in its Indianapolis office.
LEGAL BACKGROUNDER, July 15, 2005, 4 pages

Conditioning FDA Approval On Agreement Not To Advertise Violates Law And Constitution

By **Christopher A. Brown**, an associate in the Food and Drug practice group of the law firm Sonnenschein Nath & Rosenthal LLP in its Washington, D.C. office, and **Teisha C. Johnson**, who was a summer associate with the law firm of Sonnenschein Nath & Rosenthal LLP in its Washington, D.C. office during the summer of 2005.
LEGAL BACKGROUNDER, July 15, 2005, 4 pages

“Gainsharing” Arrangements Present Challenging Issues For Policymakers & Participants

By **Sanford V. Teplitzky**, a Principal and Chairman of the Health Law Department of the law firm Ober, Kaler, Grimes & Shriver in its Baltimore office; and **William T. Mathias**, a Principal in the Health Law Department of Ober, Kaler, Grimes & Shriver.
LEGAL BACKGROUNDER, July 1, 2005, 4 pages

Proposal Limiting Distribution Of Health Care Information Infringes Free Speech Rights

By **Glenn G. Lammi**, Chief Counsel to Washington Legal Foundation’s Legal Studies Division.
LEGAL OPINION LETTER, June 17, 2005, 2 pages

Measured, Uniform Approach Needed To Battle “Meth” Makers’ Abuse Of OTC Medicines
By **John A. Gilbert, Jr.**, a partner with the law firm Hyman, Phelps & McNamara, P.C. He was previously an attorney in the Drug Enforcement Administration’s Office of Chief Counsel, Diversion/Regulatory Section.

LEGAL BACKGROUNDER, June 3, 2005, 4 pages

Linking Medicare Coverage to Research Participation: Reasonable and Necessary?

By **Grant P. Bagley, M.D., J.D.**, a partner in Arnold & Porter LLP’s Washington, D.C., office, where his practice focuses on the representation of drug and device manufacturers for regulatory and reimbursement matters before public and private agencies; and **Rosemary Maxwell**, Counsel to the law firm Arnold & Porter LLP in its Washington, D.C. office. Ms. Maxwell focuses on healthcare compliance and public policy issues.

WORKING PAPER, May 2005, 23 pages

Petition Seeks Transfer Of Oversight For Drug Promotion Investigations

By **Richard Samp**, Chief Counsel of the Washington Legal Foundation.

COUNSEL’S ADVISORY, May 6, 2005, 1 page

State Drug Ad “Rebate” Proposal Treads On Commercial Speech Rights

By **Rosemary C. Harold**, a partner, and **Mark A. McAndrew**, an associate in the Washington, D.C. law firm Wiley, Rein & Fielding LLP.

LEGAL OPINION LETTER, March 25, 2005, 2 pages

DEA’s Review Of Drug Approvals Could Limit Access To Vital Medicines

By **James R. Phelps**, a founding partner of the law firm Hyman, Phelps & McNamara, P.C. and **John A. Gilbert, Jr.**, also a partner with the firm.

LEGAL BACKGROUNDER, March 11, 2005, 4 pages

Making FDA Work For Patients

By **Steven Walker**, Regulatory Advisor to the Abigail Alliance for Better Access to Developmental Drugs, an Arlington, Virginia-based patient group dedicated to helping cancer patients and others with life-threatening and serious diseases.

LEGAL BACKGROUNDER, February 25, 2005, 4 pages

Conversations With: Prescription Drug Abuse

Features **The Honorable Dick Thornburgh**, Counsel to the law firm Kirkpatrick & Lockhart Nicholson Graham LLP leading a discussion with **The Honorable Rudolph W. Giuliani**, Chairman and Chief Executive Officer, Giuliani Partners LLC.

CONVERSATIONS WITH, Winter 2005, 6 pages

What Businesses Need To Know About FDA’s Plan To Combat Obesity

By **Sarah A. Key**, an attorney in the Washington, D.C. office of the law firm Morgan Lewis LLP.

LEGAL OPINION LETTER, January 28, 2005, 2 pages

FDA Must Reform Its Arbitrary Drug Name Review Process

By **Jeffrey N. Gibbs**, a director at the Washington, D.C. law firm Hyman, Phelps & McNamara.

LEGAL BACKGROUNDER, January 28, 2005, 4 pages

Drug Price Regulation By Lawsuit Hazardous To American's Health

By **Kevin E. Grady**, an antitrust partner in the Atlanta office of the law firm Alston & Bird LLP; **Marc J. Scheineson**, a food and drug partner in the firm's Washington, D.C. office and a former FDA Associate Commissioner; and **Stewart F. Alford IV**, an associate in the trial practice and antitrust groups of the firm's Atlanta office.

LEGAL BACKGROUNDER, December 3, 2004, 4 pages

CMS Advises On Reimbursement For Off-Label Use Of Drugs

By **David Price**, Senior Vice President for Legal Affairs of the Washington Legal Foundation.
COUNSEL'S ADVISORY, October 15, 2004, 1 page

State Fraud Suits Over Drug Clinical Trial Results Tread On Free Speech Rights

By **Mark E. Nagle**, a partner in the Washington, D.C. office of the law firm Sheppard, Mullin, Richter & Hampton LLP, who, immediately prior to joining the firm, served as Chief of the Civil Division in the United States Attorney's office for the District of Columbia.

LEGAL BACKGROUNDER, September 17, 2004, 4 pages

Medicare Drug Reimbursement Reform Presents Challenges And Opportunities

By **Glenn G. Lammi**, Chief Counsel of the Washington Legal Foundation's Legal Studies Division.

LEGAL OPINION LETTER, August 20, 2004, 2 pages

Senate Proposal On Drug Importation Treads On Constitutional Rights

By **Burt Neuborne**, John Norton Pomeroy Professor of Law at New York University Law School, where he has taught Constitutional Law, Federal Courts, Civil Procedure and Evidence for more than thirty years.

LEGAL BACKGROUNDER, July 9, 2004, 4 pages

NIH Invites Public Comment On Petition Seeking Drug Price Controls

By **David Price**, Senior Vice President for Legal Affairs of the Washington Legal Foundation.
COUNSEL'S ADVISORY, June 25, 2004, 1 page

Drug Importation: A Prescription To Put Biotech On Life Support

By **David M. McIntosh**, a former Congressman from Indiana, and currently a partner in the Washington office of the Washington law firm Mayer, Brown, Rowe & Maw LLP.

LEGAL BACKGROUNDER, June 11, 2004, 4 pages

Debate Over "Generic Biologics" Poses Unique Challenges For Policy Makers

By **Alvin J. Lorman**, a partner in the Washington, D.C. office of the global law firm of Mayer, Brown, Rowe & Maw LLP.

LEGAL BACKGROUNDER, May 14, 2004, 4 pages

Unique California Laws Imperil Speech On "Off-Label" Use Of Drugs

By **Lisa M. Baird** and **Michael K. Brown**, partners in the international law firm of Reed Smith LLP who specialize in litigation involving the pharmaceutical and medical device industries.

LEGAL BACKGROUNDER, May 14, 2004, 4 pages

Altering Patent Suit Proof Burden Would Chill Innovation

By **Michael J. Shuster**, co-chair of the law firm Fenwick & West's Bioscience Industries Group, **Dan Flam**, an intern with the firm, and **Sasha Blaug**, an analyst with the firm.

LEGAL BACKGROUNDER, April 16, 2004, 4 pages

Better Late Than Sorry: Medicare Reform Ushers In New Rules On Generic Drugs

By **Alan R. Bennett**, a partner with the law firm of Ropes & Gray LLP in the firm's Washington, D.C. office and **X. Joanna Wu, Ph.D.**, an associate with the law firm in the Boston office.

LEGAL BACKGROUNDER, March 19, 2004, 4 pages

Appeals Court Opens Door To Suits On Medicare Agency Decisions

By **David Price**, Senior Vice President, Legal Affairs, of the Washington Legal Foundation.

COUNSEL'S ADVISORY, March 5, 2004, 1 page

Does Reprocessing Of Medical Devices Tread On Trademark Rights?

By **James Dabney Miller**, a partner with the law firm King & Spalding LLP.

LEGAL BACKGROUNDER, March 5, 2004, 4 pages

FDA Guidance for "DTC" Ads Strives To Advance Consumer Understanding

By **Rosemary C. Harold**, a partner with the Washington, D.C. law firm Wiley Rein & Fielding LLP, and **John F. Kamp**, of counsel to the firm.

LEGAL OPINION LETTER, February 20, 2004, 2 pages

Patent Harmonization Through The UN: International Progress Or Deadlock?

By **The Honorable Gerald J. Mossinghoff**, Senior Counsel, Oblon, Spivak, McClellan, Maier & Neustadt; Cifelli Professorial Lecturer, The George Washington University Law School; and former Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

LEGAL BACKGROUNDER, December 19, 2003, 4 pages

Avoiding Collisions At The Intersection Of Antitrust And Intellectual Property Laws

By **Scott P. Perlman** and **Lily Fu Swenson**, partners in the Washington, D.C. office of the law firm Mayer, Brown, Rowe & Maw LLP.

CONTEMPORARY LEGAL NOTE, December 2003, 38 pages

European Court Issues Encouraging Ruling On Intellectual Property

By **Howard Fogt**, a partner in the Washington, D.C. office of the law firm Foley & Lardner and **Sophie Lignier**, of counsel in the firm's Brussels office.

LEGAL OPINION LETTER, October 31, 2003, 2 pages

Accurate Drug Price Reporting: A Modest Proposal

By **Grant Bagley**, **John Bentivoglio**, and **Rosemary Maxwell**, members of the healthcare and pharmaceutical regulatory practice in the Washington, D.C. office of the law firm Arnold & Porter.

LEGAL BACKGROUNDER, October 17, 2003, 4 pages

FDA Lacks Authority To Impose Civil Monetary Fines

By **Marc J. Scheineson**, a partner in the law firm of Reed Smith, LLP and **Robert J. Kaufman**, a third year law student at Harvard Law School.

LEGAL BACKGROUNDER, October 17, 2003, 4 pages

FDA Should Propose Rule On Federal Preemption Of Failure To Warn Lawsuits

By **James Dabney Miller**, a partner with the law firm King & Spalding LLP in its Washington, D.C. office.

LEGAL BACKGROUNDER, September 19, 2003, 4 pages

Research Grants And Fraud Laws: The Need To Separate Sales And Science

By **David Hoffmeister**, a partner with the law firm Wilson Sonsini Goodrich & Rosati.

LEGAL BACKGROUNDER, July 18, 2003, 4 pages

Compliance Planning For "Voluntary" Guidelines On Drug Marketing Practices

By **Susan B. Geiger**, a partner at the law firm Preston Gates Ellis & Rouvelas Meeds LLP in its Washington, D.C. office, **Brian K. McCalmon**, an associate at Preston Gates Ellis & Rouvelas Meeds LLP, and **Francie Makris, Esq.**, Washington D.C.

CONTEMPORARY LEGAL NOTE, July, 2003, 23 pages

FDA Lacks Authority To Force Over-The-Counter Drug Switch

By **Andrew S. Krulwich**, a partner in the Washington, D.C. law firm Wiley Rein & Fielding LLP.

LEGAL BACKGROUNDER, June 27, 2003, 4 pages

States' Use Of Lawsuits To Regulate Drug Pricing Threatens Patients' Health

By **James M. Spears** and **Terry S. Coleman**, partners in the Washington office of Ropes & Gray.

LEGAL BACKGROUNDER, June 27, 2003, 4 pages

The High Cost Of Low Cost Drugs: Why The "Canadian Model" Is No Panacea For Pricing

By **Monte Solberg**, the Canadian Alliance Member of Parliament for Medicine Hat Alberta currently serves as Vice Chair of the House of Commons Standing Committee on Human Resources Development.

LEGAL OPINION LETTER, June 6, 2003, 2 pages

FDA "Trans Fat" Labeling Proposal Treads On Commercial Free Speech

By **Christopher A. Brown**, an associate with the law firm of Sonnenschein Nath & Rosenthal in its Washington, D.C. office.

LEGAL OPINION LETTER, June 6, 2003, 2 pages

New CME Bias Standards Will Reduce Quality Of Medical Education

By **Alan R. Bennett** and **Dr. Gregory J. Glover**, partners with the law firm Ropes & Gray in its Washington, D.C. office.

LEGAL OPINION LETTER, June 6, 2003, 2 pages

HHS Expanded Use Of Fraud Law's "Corporate Death Sentence" Is Legally Suspect

By **Ronald H. Clark**, a Member of Arent Fox Kintner Plotkin & Kahn, PLLC in its Washington, D.C. office; **Gabriel L. Imperato**, the Managing Partner of Broad and Cassel's Fort Lauderdale office and head of the firm's White Collar/Health Care Criminal and Civil Fraud Practice; and **Robert Salcido**, a partner at Akin Gump Strauss Hauer & Feld, L.L.P., in its Washington, D.C. office.

LEGAL BACKGROUNDER, June 6, 2003, 4 pages

Commercial Speech And The Limits Of Federal Anti-Kickback Laws

By **Rosemary Maxwell**, a member of the health care and pharmaceutical regulatory practice in the Washington, D.C. office of the law firm Arnold & Porter.

WORKING PAPER, May 2003, 27 pages

FDA Limits On Dual Trademarks Tread On Patient Safety And Law

By **Marc J. Scheineson**, a partner in the law firm of Reed Smith, LLP in Washington, D.C. where he heads the firm's food and drug practice.

LEGAL BACKGROUNDER, April 25, 2003, 4 pages

Michigan High Court Upholds Drug Product Liability Reform

By **Thomas J. Foley**, a founder of the Detroit area law firm of Foley, Baron & Metzger, PLLC.

COUNSEL'S ADVISORY, April 25, 2003, 1 page

FDA Must Clarify Drug Makers' Ability To Publicly Defend Products

By **Kathleen M. Sanzo** and **Stephen Paul Mahinka**, partners in the Washington, D.C. office of the law firm of Morgan Lewis, LLP.

LEGAL OPINION LETTER, February 28, 2003, 2 pages

Dramatic Changes To CME Accreditation Process Compel Scrutiny And Comment

By **Richard Samp**, Chief Counsel of the Washington Legal Foundation.

COUNSEL'S ADVISORY, February 14, 2003, 1 page

Pharmacist's Crime Shouldn't Expose Businesses To Liability

By **Thomas P. Redick**, a partner in the St. Louis law firm Gallop, Johnson & Neuman, L.C.

LEGAL OPINION LETTER, January 31, 2003, 2 pages

Mixed Results For Free Speech In FDA Health Claims Guidance

By **George W. Evans**, Associate General Counsel to Pfizer, Inc., and **Arnold I. Friede**, Senior Corporate Counsel to Pfizer.

LEGAL OPINION LETTER, January 17, 2003, 2 pages

Vaccine Liability Law Clarification Protects Lives And Resources

By **Victor E. Schwartz**, chairman of the Public Policy Group at the law firm Shook, Hardy & Bacon L.L.P., and **Leah Lorber**, of counsel to the firm.

LEGAL BACKGROUNDER, January 10, 2003, 4 pages

Biting The Hand That Feeds?: Generic Drugs And Abuse Of The Hatch-Waxman Law

By **Robert D. Bajefsky**, a partner of the intellectual property law firm of Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., in Washington, D.C., and **Gregory Chopskie**, an associate in the firm's Bio/Pharmaceutical Practice Group.

LEGAL BACKGROUNDER, December 6, 2002, 4 pages

Federal Court Ruling Impacts FDA Suppression Of Medical Speech

By **George W. Evans**, an Associate General Counsel, Pfizer Inc., and General Counsel–Pfizer Pharmaceuticals Group, and **Arnold I. Friede**, a Senior Corporate Counsel at Pfizer Inc., who formerly served in the FDA Chief Counsel's Office.

LEGAL OPINION LETTER, November 15, 2002, 2 pages

FDA Limits On Print Drug Ads Violate First Amendment

By **Richard L. Frank**, a principal at the Washington, D.C. law firm Olsson, Frank and Weeda, P.C., and **Tish Eggelston Pahl**, a senior associate at Olsson, Frank and Weeda, P.C.

LEGAL BACKGROUNDER, October 4, 2002, 4 pages

FTC Administrative Judge Rejects Commission's View Of Drug Patent Settlements

By **Geraldine M. Alexis** and **Zorah Braithwaite**, a partner and an associate, respectively, with the law firm Bingham McCutchen LLP in its San Francisco office.

LEGAL BACKGROUNDER, October 4, 2002, 4 pages

In The Eye Of The Storm: Tips For Managing An FDA Recall

By **David M. Hoffmeister**, a partner with the law firm Wilson Sonsini Goodrich & Rosati, and **Wayne L. Pines**, President of Regulatory Services and Healthcare at APCO Worldwide.

LEGAL BACKGROUNDER, September 6, 2002, 4 pages

FTC, Not FDA, Should Regulate Online Food Information

By **Lawrence S. Ganslaw**, an associate, and **Kathleen M. Sanzo**, a partner, in the Washington, D.C. office of the law firm Morgan, Lewis & Bockius LLP.

LEGAL BACKGROUNDER, September 6, 2002, 4 pages

An FDA Q&A: How Does The First Amendment Limit Its Regulatory Power

By **Alan R. Bennett**, a partner in the Washington, D.C. office of the law firm Ropes & Gray, and **Kenneth P. Berkowitz**, President of KPB Associates, a Washington, D.C. consulting firm specializing in the regulation of medical communications.

LEGAL BACKGROUNDER, August 23, 2002, 4 pages

Proposed Limits On Prescription Drug Ads: A Constitutional Analysis

By **Bert W. Rein** and **Rosemary C. Harold**, partners at the Washington, D.C. firm Wiley, Rein & Fielding, and **John F. Kamp**, of counsel to the firm.

WORKING PAPER, July 2002, 40 pages

Drug Ads Enhance Health By Empowering Patients

By **Richard L. Manning, PhD**, Director of Economic Policy Analysis at Pfizer Inc.

LEGAL OPINION LETTER, May 10, 2002, 2 pages

Recent Patent Ruling Intrudes On Key Antitrust Immunity Doctrine

By **Christopher Sipes** and **James R. Atwood**, partners in the Washington, D.C. office of the law firm Covington & Burling.

LEGAL BACKGROUNDER, April 26, 2002, 4 pages

New FDA Policy On Warning Letters A Sensible Move Towards Due Process

By **Larry R. Pilot**, a partner in the Washington, D.C. office of the law firm McKenna Long & Aldridge.

LEGAL OPINION LETTER, January 25, 2002, 2 pages

Forcing Drugs To "OTC" Status Treads On Law And Patient Safety

By **Richard F. Kingham**, a partner with the Washington, D.C. law firm Covington & Burling practicing for nearly thirty years in the areas of food and drug law and regulation.

LEGAL BACKGROUNDER, November 2, 2001, 4 pages

New Commissioner Must Adapt FDA To A New Security Role

By **Alan Slobodin**, Senior Oversight Counsel at the House Energy and Commerce Committee.

LEGAL BACKGROUNDER, October 19, 2001, 4 pages

Priorities For A New FDA Commissioner

By **John W. Bode**, a partner with the Washington, D.C. law firm Olsson, Frank and Weeda, P.C. and a former Assistant Secretary of Agriculture.

LEGAL BACKGROUNDER, October 5, 2001, 4 pages

Innovative Reforms Could Reduce Time And Cost Of Drug Approvals

By **Henry I. Miller**, a fellow at the Hoover Institution and the Competitive Enterprise Institute.

LEGAL OPINION LETTER, June 15, 2001, 2 pages

Excessive FDA Scrutiny Of DTC Ads Undermines Speech Rights

By **Sandra J. P. Dennis**, a partner, and **Lawrence S. Ganslaw**, an associate, in the Washington D.C. office of Morgan Lewis LLP in the FDA/Product Regulation Practice Group.

LEGAL BACKGROUNDER, May 18, 2001, 4 pages

Activists Use Mad Cow Scare To Advance Ideological Agendas

By **David Martosko**, Director of Research for The Guest Choice Network.

LEGAL BACKGROUNDER, May 4, 2001, 4 pages

Does Junk Science Influence FDA Decisions On Drug Recalls?

By **Carl W. Hampe**, a partner with the international law firm Baker & McKenzie.

LEGAL BACKGROUNDER, February 9, 2001, 4 pages

Federal Court Blocks Maine Drug Price Control Law

By **Richard A. Samp**, Chief Counsel to the Washington Legal Foundation.

COUNSEL'S ADVISORY, November 17, 2000, 1 page

Proposal To Deny Tax Deduction For Drug Ad Expenses Unconstitutional

By **John F. Kamp**, Of Counsel to the Washington, D.C. law firm Wiley, Rein & Fielding.

LEGAL OPINION LETTER, October 23, 2000, 2 pages

FDA's Restitution "Authority" Relies Upon Flawed Court Ruling

By **Jeffrey N. Gibbs**, a partner with the Washington, D.C. law firm Hyman, Phelps & McNamara.
LEGAL OPINION LETTER, October 6, 2000, 2 pages

Maine Drug Price Control Act Vulnerable To Legal Challenge

By **Glenn G. Lammi**, Chief Counsel to Washington Legal Foundation's Legal Studies Division.
LEGAL OPINION LETTER, July 14, 2000, 2 pages

FDA And DTC Advertising: Changes, Challenges & Constitutional Scrutiny

By **Sandra J. P. Dennis**, a partner in the Washington D.C. office of Morgan Lewis LLP
CONTEMPORARY LEGAL NOTE, October 1999, 28 pages

Court Again Nullifies FDA Policies Restricting Health Care Information

By **George M. Burditt**, a partner with the Chicago law firm Bell, Boyd & Lloyd.
LEGAL OPINION LETTER, September 17, 1999, 2 pages

Court Ruling Frustrates Access To Off-label Drug Information

By **Mark Boulding**, General Counsel and Vice President, Regulatory Affairs for Medscape Inc.
LEGAL OPINION LETTER, April 30, 1999, 2 pages

Court Suppresses FDA Censorship Of Health Product Information

By **George M. Burditt**, a partner with the Chicago law firm Bell, Boyd & Lloyd.
LEGAL OPINION LETTER, November 4, 1998, 2 pages

FDA "Draft Guidance" Suppresses Critical Health Care Information

By **Marc J. Scheineson**, head of the food and drug practice at the law firm Reed Smith from its Washington, D.C. office, and a former FDA Associate Commissioner for Legislative Affairs, and **Katherine Chen**, a food and drug associate at the firm.
LEGAL BACKGROUNDER, April 3, 1998, 4 pages

Public Comment Can Shape FDA Guidance On TV Advertising

By **Mark E. Boulding**, General Counsel & Vice President, Regulatory Affairs for Medscape Inc.
LEGAL OPINION LETTER, September 12, 1997, 2 pages

Ten Questions For The Next FDA Commissioner

By **Daniel J. Popeo**, Chairman and General Counsel to the Washington Legal Foundation.
LEGAL BACKGROUNDER, April 4, 1997, 4 pages

Federal Appeals Court Finds State Food Labeling Law Unconstitutional

By **Steven J. Rosenbaum**, a partner and **Sarah E. Taylor**, Of Counsel, in the Washington, D.C. offices of Covington & Burling.
LEGAL OPINION LETTER, December 6, 1996, 2 pages.

Federal Court Must Strike Down FDA Censorship Of Advertising

By **David S. Versfelt**, a partner with the New York office of the law firm Kirkpatrick & Lockhart LLP.
LEGAL BACKGROUNDER, November 1, 1996, 4 pages

FDA Regulation May Inhibit Positive Uses Of The Internet

By **Daniel A. Kracov**, a partner with the Washington, D.C. law firm Patton Boggs LLP, and **David J. Bloch**, a partner in the Washington, D.C. office of the law firm Reed Smith.
LEGAL BACKGROUNDER, October 4, 1996, 4 pages

Era Of Big Government Continues With Scrutiny Of Menus

By **Elizabeth Toni Guarino**, an attorney with the Washington, D.C. law firm Vorys, Sater, Seymour and Pease LLP.
LEGAL BACKGROUNDER, September 6, 1996, 4 pages

Comment On Potential Revisions To FDA Regulations

By **Alan R. Bennett**, a partner in the Washington, D.C. office of the law firm Ropes & Gray.
COUNSEL'S ADVISORY, August 23, 1996, 1 page

FDA Prevents Doctors And Consumers From Receiving Health Care Information

By **William G. Castagnoli**, former Chairman of Medicus Communications, and **Harry A. Sweeney, Jr.**, President of Dorland Sweeney Jones, agencies specializing in pharmaceutical advertising and health care communications.
LEGAL BACKGROUNDER, December 15, 1995, 4 pages

The Pedicle Screw And FDA: Another Example Of Politicized Science

By **Neil Kahanovitz, M.D.**, a practicing orthopedic surgeon and founder and President of Center for Patient Advocacy.
COUNSEL'S ADVISORY, October 18, 1995, 1 page

FDA Suppression Of Advertising To Consumers Violates The First Amendment

By **William C. MacLeod**, a partner with the Washington, D.C. law firm of Collier Shannon Scott.
LEGAL BACKGROUNDER, September 15, 1995, 4 pages

FDA Inhibits Free Flow Of Information On Medical Products

By **Alan R. Bennett**, a partner in the Washington, D.C. office of the law firm Ropes & Gray, and **Mark E. Boulding**, General Counsel and Vice President, Regulatory Affairs for Medscape.
LEGAL BACKGROUNDER, September 1, 1995, 4 pages

FDA Criminal Enforcement: Punish Intent — Not Relationships

By **John F. Lemker**, a partner with the Chicago law firm Bell, Boyd & Lloyd.
LEGAL BACKGROUNDER, June 30, 1995, 4 pages

FDA Financial Disclosure Proposal Should Be Withdrawn

By **Jeffrey N. Gibbs**, a partner with the Washington, D.C. law firm Hyman, Phelps & McNamara.
LEGAL BACKGROUNDER, April 14, 1995, 4 pages

FDA Reform Will Improve Nation's Health Care And Competitiveness

By **Alan H. Magazine**, former President of the Health Industry Manufacturers Association.
LEGAL BACKGROUNDER, March 3, 1995, 4 pages

Oversight Of FDA Should Focus On Agency's Abuse Of Power And Misuse Of Science
By **James R. Phelps**, a partner with the Washington, D.C. law firm Hyman, Phelps & McNamara.
LEGAL BACKGROUNDER, March 3, 1995, 4 pages

FDA Direct-To-Consumer Advertising Regulation Raises Constitutional And Policy Concerns
By **James M. Johnstone**, a Washington, D.C. lawyer.
LEGAL BACKGROUNDER, January 20, 1995, 4 pages

Weigh In Against FDA Suppression
By **Richard A. Samp**, Washington Legal Foundation Chief Counsel.
COUNSEL'S ADVISORY, December 16, 1994, 1 page

FDA's Legally Suspect Actions Invite Challenge
By **Glenn G. Lammi**, Chief Counsel of WLF's Legal Studies Division.
LEGAL BACKGROUNDER, November 28, 1994, 4 pages

FDA Paralysis Raises Health Care Costs
By **Alan M. Slobodin**, Senior Counsel to the House Energy & Commerce Committee, and **Roman P. Storz**, a former WLF Fellow.
LEGAL BACKGROUNDER, November 14, 1994, 4 pages

The Real Problem With Health Care In America: While FDA Fiddles, Medical Approvals Lag And Americans Die
By **Alan M. Slobodin**, Senior Counsel to the House Energy & Commerce Committee.
LEGAL BACKGROUNDER, October 28, 1994, 4 pages

What The FDA Doesn't Want You To Know Could Kill You
By **Richard A. Samp**, Chief Counsel to the Washington Legal Foundation.
LEGAL BACKGROUNDER, October 7, 1994, 4 pages

Let's Stop Playing Culinary Roulette And Get On With Irradiating Food
By **Paul B. Jacoby**, a Washington, D.C. attorney, and **James Baller**, a partner with the Washington, D.C. law firm of Baller Hammett, P.C.
LEGAL OPINION LETTER, May 20, 1994, 2 pages

Regulate To Eliminate: The Real Goal Of The Neo-Prohibitionist Movement
By **Dr. James T. Bennett**, a Professor of Economics at George Mason University.
LEGAL BACKGROUNDER, February 28, 1994, 4 pages

The Delaney Clause Should Not Block A More Balanced Food Safety Policy
By **Richard A. Merrill**, Dean of the University of Virginia School of Law and Special Counsel to the Washington, D.C. law firm of Covington & Burling.
LEGAL BACKGROUNDER, March 19, 1993, 4 pages

FDA Should Stay Bound By Its Advisory Opinions
By **Jeffrey N. Gibbs**, a partner with the Washington, D.C. law firm Hyman, Phelps & McNamara.
LEGAL OPINION LETTER, March 5, 1993, 2 pages

FDA Criminal Enforcement: How To Prevent And Defend Against Liability

By **Steven M. Kowal**, a partner with the Chicago law firm Bell, Boyd & Lloyd. Foreword by **C. Manly Molpus**, President and CEO, Grocery Manufacturers of America, Inc.
MONOGRAPH, January 1993, 72 pages

Zero-Risk Standards For Pesticides In Foods Should Be Reversed

By **Paul B. Jacoby**, **Frederick A. Provorny**, Washington, D.C. attorneys, and **Sarah J. Ross**, an attorney with the Washington, D.C. firm of Shaw Pittman.
LEGAL OPINION LETTER, September 25, 1992, 2 pages

Public Health Advances Impeded As Anti-Science Activists Thwart Food Safety Program

By **Robert G. Hibbert**, a partner with the law firm of McDermott, Will & Emery, Washington, D.C.
LEGAL BACKGROUNDER, August 14, 1992, 4 pages

FDA's Enforcement Agenda — What's Next?

By **Stuart M. Pape**, a partner in the Washington, D.C. law firm of Patton Boggs specializing in food and drug law.
LEGAL BACKGROUNDER, June 5, 1992, 4 pages

Pesticide Tolerances And Food Safety: Two Hot Topics In Congress And The Courtroom In 1992

By **Paul B. Jacoby**, **Frederick A. Provorny**, Washington, D.C. attorneys, and **Sarah J. Ross**, an attorney with the Washington, D.C. firm of Shaw Pittman.
LEGAL OPINION LETTER, April 10, 1992, 2 pages

There They Go Again: Activists Use Junk Science To Block Food Irradiation Technology

By **Glenn G. Lammi**, Chief Counsel to WLF's Legal Studies Division.
LEGAL OPINION LETTER, February 21, 1992, 2 pages

Proposed FDA Advertising And Promotion Guidelines Would Inhibit Free Exchange Of Ideas

By **Melinda L. Sidak**, an attorney with the Washington, D.C. office of Covington & Burling.
LEGAL BACKGROUNDER, February 21, 1992, 4 pages

FDA Food Agenda Overlooks The Basics

By **Gary Jay Kushner**, a partner in the Washington, D.C. office of Hogan & Hartson.
LEGAL BACKGROUNDER, February 21, 1992, 4 pages

Targeting Of Brand Names By FDA And USDA Raises First And Fifth Amendment Issues

By **Hugh Latimer**, a partner in the Washington, D.C. office of Wiley, Rein & Fielding.
LEGAL BACKGROUNDER, January 24, 1992, 4 pages

MSG "Junk Science": A Folly That Does Not Warrant FDA Regulation

By **Glenn G. Lammi**, Chief Counsel to WLF's Legal Studies Division.
LEGAL BACKGROUNDER, January 10, 1992, 4 pages

CONFIDENTIAL

Proposed Legislation To Enhance FDA Enforcement Powers Raises Constitutional Concerns
By **Edward Dunkelberger**, formerly a partner in the Washington, D.C. office of Covington & Burling.

LEGAL BACKGROUNDER, September 6, 1991, 4 pages

ACTIVITIES REPORT

to the

**WASHINGTON LEGAL FOUNDATION
BOARD OF TRUSTEES**

**REFORMING
THE AMERICAN LEGAL SYSTEM**

July 31, 2006

TABLE OF CONTENTS

INTRODUCTION 1

I. LITIGATION AND REGULATORY PROCEEDINGS 1

 A. Protecting Business Civil Liberties 2

 1. Commercial Free Speech Rights 2

 2. Property Rights of Businesses and Landowners 8

 3. Confiscation of Trade Secrets and Other Intellectual Property 11

 4. Unlawful Government Regulation and Taxation 13

 B. Environmental Law Project 16

 1. Abusive Criminal and Civil Enforcement 16

 2. “Environmental Justice” and Title VI 20

 C. Reining in the Plaintiffs’ Bar 21

 1. Opposing Excessive Attorneys’ Fees 21

 2. Opposing Abusive Litigation Tactics 26

 D. Class Action Reform 29

 E. Limiting Punitive Damages 35

 F. Antitrust Law Reform 38

 G. Preemption of State Lawsuits/Regulation 41

 H. Barring “Junk Science” from the Courtroom 42

 I. Abuse of the Securities Laws 43

 J. Abuse of the Federal False Claims Act 46

 K. Opposing Excessive Asbestos Litigation 47

 L. Fairness in Government Contracting 49

CONFIDENTIAL

M.	Opposing Creation of New Tort Liability Theories	50
N.	Opposing Criminalization of Business Practices	55
II.	CIVIC COMMUNICATION	58
A.	Media Briefings	58
B.	Web Seminars	60
C.	Advocacy Ads	61
D.	Public Appearances	62
III.	PUBLICATIONS	67

JULY 31, 2006

**ACTIVITIES REPORT TO THE
WASHINGTON LEGAL FOUNDATION
BOARD OF TRUSTEES**

**REFORMING
THE AMERICAN LEGAL SYSTEM**

The ideals upon which America was founded – individual freedom, limited government, a free-market economy, and national security – are the same principles that the Washington Legal Foundation (WLF) defends in the public interest arena. Adherence to those principles is essential to maintaining America's position as the possessor of the finest and fairest legal system in the world.

Throughout its 29 years, WLF has devoted a significant portion of its resources to bringing about fundamental reforms in the American legal system. Those law-reform efforts have focused on protecting the civil liberties of the business community; seeking to rein in the excesses of the plaintiffs' bar; ensuring that environmental laws are properly balanced by protecting our natural resources without unnecessarily undermining the health of the economy; ensuring that class action lawsuits are not used as a means to extort unwarranted settlements from deep-pocketed defendants; working to prevent the award of excessive punitive damages in tort suits; and ensuring that economic development is not stifled by excessive litigation.

WLF has worked to achieve those objectives through its precedent-setting litigation, its involvement in government regulatory proceedings, its publication of timely articles on legal reform-related issues, and its tireless advocacy for free-market solutions in the news media and other public forums. This report provides an update on current WLF efforts and highlights some of the more significant WLF legal reform-related activities of the past five years.

I. LITIGATION AND REGULATORY PROCEEDINGS

Litigation is the backbone of WLF's public interest programs. The Foundation litigates across the country before state and federal courts and administrative agencies. WLF represents only those who are otherwise unable to retain counsel on their own. Its clients have included numerous individuals and advocacy groups who have turned to WLF for assistance when their economic rights were threatened by government bureaucrats or unscrupulous plaintiffs' lawyers.

A. Protecting Business Civil Liberties

1. Commercial Free Speech Rights

There are any number of regulators and activists who believe they can make the world a better place by gagging companies that they dislike, or by forcing those companies to put out government-mandated messages. WLF believes freedom of speech is for everyone – as does the U.S. Supreme Court. Accordingly, WLF has been at the forefront of fighting for the right of business enterprises to engage in truthful and non-misleading speech.

Doe v. Wal-Mart Stores, Inc. On May 5, 2006, WLF filed a brief in U.S. District Court in Los Angeles, urging the Court to dismiss a lawsuit brought against Wal-Mart by activists who are critical of Wal-Mart's overseas labor practices. In response to such criticisms, Wal-Mart issued statements denying that it purchases products manufactured overseas under "sweat shop" conditions. The activists responded by filing suit against Wal-Mart under California's infamous "unfair competition" law, claiming that Wal-Mart's denials are false and constitute unfair competition. WLF's brief urged dismissal on the ground that the First Amendment fully protects Wal-Mart's right to speak out on issues of public importance, such as international labor conditions. WLF also urged dismissal of the plaintiffs' claims that overseas labor practices used by Wal-Mart's suppliers violate international human rights laws because they constitute "slavery." The court heard oral arguments in the case on July 24, 2006.

In re Tobacco Cases II. On September 14, 2005, WLF filed a brief in the California Supreme Court, urging the court to uphold the dismissal of tort claims filed against tobacco companies for having run truthful advertising that allegedly overglamorized smoking. WLF argued that such claims are barred both by the First Amendment and by federal law – regardless of the plaintiffs' claim that glamorous advertisements induce minors to buy cigarettes in violation of California law. WLF argued that cigarette advertising is already heavily regulated at the federal level (by the Federal Cigarette Labeling and Advertising Act and by oversight conducted by the Federal Trade Commission), and at the State level by State regulators (by virtue of the Master Settlement Agreement entered into between tobacco companies and State attorneys general). WLF argued that there is no reason to permit an additional level of advertising regulation, in the form of tort suits filed under State law.

Physicians Comm. for Responsible Medicine v. General Mills. On September 2, 2005, WLF filed a brief in the U.S. District Court for the Eastern District of Virginia, urging the court to dismiss a lawsuit by animal rights activists who are seeking to stop advertisements being run by the milk industry. WLF argued that the suit threatens to undermine manufacturers' commercial speech rights. WLF argued that if a manufacturer can be subjected to expensive lawsuits filed by activists who do not like statements the manufacturer makes on issues of public importance, then significant amounts of truthful speech will be chilled as manufacturers become increasingly unwilling to comment on such issues. The suit targets a recent milk industry advertising campaign that advocates increased consumption of dairy products as a method of losing weight. The Physicians Committee for Responsible Medicine (PCRM) challenges the validity of the scientific studies that form the basis for the industry's advertising. PCRM argues that the weight-loss claim is false and violates Virginia's consumer protection and false advertising laws. Their principal request is that the

court issue an injunction against any further promotion of the weight-loss claims. WLF argued that Virginia law does not permit individuals to obtain injunctions against speech. WLF also argued that such suits raise serious First Amendment issues because of their potential to chill truthful speech on issues of public importance, such as whether increases in consumption of dairy products are good for one's health.

R.J. Reynolds Tobacco Co. v. Shewry. On February 21, 2006, the U.S. Supreme Court declined to review an appeals court decision that rejected a First Amendment challenge to an advertising campaign conducted by the State of California. The Court's action, made without comment, was a setback for WLF, which filed a brief urging the Court to review the appeals court ruling. WLF argued that the First Amendment prohibits a State from forcing a company to pay for advertisements that vilify the company. California imposes a special fee on the tobacco industry and then uses it to finance a \$25 million per-year ad campaign that repeatedly portrays tobacco companies as liars and "public enemies." WLF argued that the First Amendment protection against compelled financial support of speech to which one objects has been recognized repeatedly by the courts and applies just as strongly when the speaker is the government as it does when the speaker is a private party. WLF also filed briefs in the case when it was before the appeals court.

Petition Regarding Restrictions on Speech About Part D Plans. On April 4, 2006, WLF petitioned the federal Centers for Medicare and Medicaid Services (CMS) to lift restrictions on commercial speech imposed by CMS's marketing guidelines for carriers offering Medicare prescription drug benefit plans. The guidelines prohibit carriers from making truthful and non-misleading statements comparing their plans to other plans. WLF's petition asserted that the speech restrictions are beyond the scope of CMS's authorizing regulations and violate the First Amendment rights of carriers and consumers.

Johanns v. Livestock Marketing Ass'n. On May 23, 2005, the U.S. Supreme Court ruled that the federal government may force beef producers to provide financial support for advertising with which they disagree, because the government at least nominally supervises the advertising. The 6-3 decision was a setback for WLF, which filed a brief urging the Court to strike down the advertising program. WLF argued that the First Amendment protects not only the right to speak but also the right not to speak, and that forcing someone to provide financial support for private speech with which he disagrees violates his First Amendment rights. *Johanns* was a challenge to a Department of Agriculture program that requires all beef producers and importers to fund a generic advertising campaign administered by a committee of producers. Many producers object to the advertising campaign, particularly to advertisements indicating that beef is fungible. These producers contend that their beef is superior to other beef on the market. The Court held that so long as the speech in question originates with the government, the First Amendment does not prohibit the government from forcing small groups of people to fund the speech against their will.

Nike, Inc. v. Kasky. On June 26, 2003, the U.S. Supreme Court decided not to review a California court decision that threatens to impose severe restrictions on the right of corporations to speak freely on matters of public importance. The Court initially agreed in January to review the case. On the last day of its 2002-2003 term, the Court changed its mind and dismissed as "improvidently granted" its original order granting review. As a result, the case returned to the California courts for further proceedings. WLF filed two briefs in the case: one in November 2002 urging the Court to hear the case and a second in February 2003

CONFIDENTIAL

urging the Court to overturn the lower court decision. WLF argued that the California court effectively held that *all* corporate speech – even speech on matters of great public importance – is entitled to reduced levels of First Amendment protection.

Trans Union LLC v. Federal Trade Comm'n. On June 10, 2002, the U.S. Supreme Court declined to review a lower-court decision that denies full First Amendment protection to truthful speech deemed by the court not to “relate to matters of public concern.” WLF argued in a brief urging review that all truthful, noncommercial speech should be entitled to full First Amendment protection. In this case, the lower court upheld an FTC order prohibiting companies from transmitting truthful, noncommercial lists of names and addresses of consumers.

Gerawan Farming, Inc. v. Kawamura. On June 3, 2004, the California Supreme Court issued a decision accepting WLF’s argument that mandatory fees for state agriculture marketing programs must be given searching scrutiny to ensure they do not violate freedom of speech. WLF had filed a brief in the Court on September 9, 2002, urging the Court to strike down a California law that compels farmers to pay for advertisements that promote plums on a generic basis. WLF argued that forcing plum growers to pay for advertising with which they disagree violates the California Constitution. The dissenting farmers have invested heavily in developing distinctive, high-quality plums, while the advertisements produced by the State promote the message that *all* California plums are of uniformly good quality. WLF argued that free speech rights must include not only the right to speak freely but also the right not to speak. The California Supreme Court sent the case back to the lower courts for further fact-finding.

People of the State of California v. R.J. Reynolds Tobacco Co. On June 9, 2004, the California Supreme Court issued an order declining to review a lower court decision that imposed significant sanctions on a company for engaging in nonmisleading commercial speech. The decision was a setback for WLF, which had filed a brief urging that review be granted. WLF argued that the First Amendment protects a company’s right to engage in such advertising and that tobacco companies have never agreed to waive such rights. California sued R.J. Reynolds Tobacco Co. for allegedly “targeting” youth with its advertising, based on evidence that Reynolds places advertising in magazines (such as *Sports Illustrated*) with up to 25% youth readership. WLF argued that Reynolds may not be sanctioned for its advertising in the absence of evidence it purposely intended to target youth; mere knowledge that some youth would see its ads is not sufficient to sanction non-misleading speech, WLF argued.

Federation of Advertising Industry Representatives v. Chicago. On October 6, 2003, the U.S. Supreme Court without comment denied WLF’s petition for review in this commercial speech case. WLF’s July 2003 petition had urged the Court to reinstate a challenge to commercial speech restrictions imposed by the City of Chicago. WLF represents a group of advertisers that has been fighting in federal court since 1997 against a Chicago ordinance that restricts outdoor advertising. In April, a federal appeals court dismissed the case as moot simply because Chicago repealed the ordinance after it became apparent that WLF was about to win the case. In its petition asking the Supreme Court to review that decision, WLF argued that a suit is never rendered moot simply because a defendant voluntarily ceases its objectionable conduct, except in very rare cases in which it is absolutely clear that the conduct will not recur. WLF argued that to dismiss a suit as moot under these circumstances would leave a government free to re-impose its speech restrictions at any time.

Lorillard Tobacco Co. v. Reilly. On June 28, 2001, the U.S. Supreme Court overturned Massachusetts regulations that banned outdoor advertising of tobacco products while imposing virtually no restrictions on other products' advertising. The decision was a victory for WLF, which had filed a brief arguing that the regulations were unconstitutional. The Supreme Court agreed with WLF that the regulations could not be upheld, in the face of a First Amendment challenge, as a measure reasonably designed to reduce underage smoking. The Court held that states could achieve that same objective by stepping up enforcement against merchants who violate the ban on sales to minors without interfering with speech. The Court also agreed with WLF that the Massachusetts regulations are preempted by a federal statute that severely limits states' power to regulate cigarette advertising.

United States v. United Foods, Inc. On June 25, 2001, the U.S. Supreme Court handed WLF a victory by striking down a federal program forcing farmers to contribute to generic advertising with which they disagree. The Court agreed with WLF that compelled *commercial* speech deserves no less constitutional protection than other forms of compelled speech. This case arose from a constitutional challenge brought to overturn certain provisions of a federal law that requires mushroom growers to fund generic advertising. In its brief filed with the Supreme Court, WLF had urged the Court to adopt the most searching standard of judicial review – strict scrutiny – in cases where a governmentally mandated subsidy program is challenged on free speech grounds. WLF asserted that the mandatory subsidy in this case could not survive that test.

Washington Legal Foundation v. Henney. On February 11, 2000, the U.S. Court of Appeals for the District of Columbia Circuit dismissed the Food and Drug Administration's appeal from a district court decision that struck down FDA regulations that severely restricted the flow of truthful information regarding off-label uses of FDA-approved drugs and medical devices. The decision was a major victory for WLF in its long-running battle against FDA speech restrictions. The appeals court did not actually address the merits of the First Amendment issues over which the parties have fought. Rather, the court dismissed FDA's appeal – thereby leaving the district court's decision substantially intact – on the basis of concessions made by FDA at oral argument in the case. The overturned restrictions threatened severe sanctions against manufacturers who distributed medical textbooks or peer-reviewed journal articles to doctors. Despite WLF's victory, FDA maintains that it retains some authority to sanction manufacturers who distribute medical texts or journal articles. In April, WLF asked the district court to order FDA to rescind such statements. On November 30, 2000, the district court declined to issue such an order, declaring that it had no on-going jurisdiction in the case. Nonetheless, as a result of WLF's victory, FDA has not initiated enforcement actions against any of the manufacturers who have exercised their First Amendment rights to disseminate truthful information. WLF stands prepared to file a new lawsuit against FDA should it take enforcement action in violation of the decision in this case.

“DDMAC Watch.” In June 2005, WLF inaugurated its “DDMAC Watch” program, designed to monitor federal regulation of prescription drug advertising. WLF has determined that the Food and Drug Administration (FDA), acting through its Division of Drug Marketing, Advertising, and Communications (DDMAC), has been using letters to industry to advance questionable legal theories and request remedial actions that the agency could not require under law. Under the DDMAC Watch program, when DDMAC sends a letter to a drug company employing theories that are legally deficient or ill-advised, WLF *immediately* sends back a letter of our own to DDMAC identifying the specific ways in which this is so. The goal of the

program is to alert the press and public to abuses occurring at DDMAC. As of July 2006, WLF had responded to 29 letters from DDMAC and related agencies; those letters were sent to Eli Lilly, Endo Pharmaceuticals, MedImmune Vaccines, Dutch Ophthalmic USA, Hoffman-LaRoche, Abbott Laboratories, Pfizer, Actelion, SuperGen, Allergan, Alcon Research, Nephrex, ISTA Pharmaceuticals, Gen Trac, Medicis Pharmaceutical, Sankyo Pharma, Duramed Pharmaceuticals, Biogen Idec, Mayne Pharma, ZLB Behring, Palatin Technologies, InterMune, VaxGen, Bioniche Pharma Group, Boehringer Ingelheim Pharmaceuticals, Sandoz, Wyeth Pharmaceuticals, PrimaPharm, and GlaxoSmithKline.

Oversight of Criminal Investigations into Improper Drug Promotion. On March 24, 2005, WLF filed a petition with the U.S. Department of Justice (DOJ), urging DOJ to remove the Office of Consumer Litigation ("OCL," a branch of DOJ located within the Civil Division) from its oversight and supervisory role in criminal cases arising under the Food, Drug, and Cosmetic Act (FDCA) involving alleged improper promotion of pharmaceuticals and medical devices. WLF charged that OCL has failed in that role and has done little to develop a coherent federal government policy regarding when such criminal investigations are warranted. WLF said that OCL has simply rubber-stamped whatever criminal investigation local U.S. Attorney Offices have sought to initiate. WLF asked that the coordination role be reassigned to an office within DOJ's Criminal Division, which has far more expertise and experience in addressing the issues inherent in any criminal investigation. WLF said that it is particularly concerned about the need for effective DOJ coordination in this area because criminal investigations of promotional activities have the potential to adversely affect the nation's health care delivery system.

Word-of-Mouth Marketing. On February 2, 2006, WLF filed with the FTC a response in opposition to a petition seeking an investigation of word-of-mouth, or "buzz," marketing programs. The petition had been filed by Commercial Alert, an activist group co-founded by Ralph Nader. Commercial Alert claimed in its petition that programs inviting consumers (without compensation) to tell their peers about new products are deceptive if the consumers do not also disclose that they are participating in a marketing program. WLF argued in its response that such communications are not deceptive and that there is no basis for requiring the disclosures sought by Commercial Alert.

Union of Concerned Scientists Campaign Against Auto Emissions Ads. On September 26, 2005, the FTC announced its decision not to take action on a letter-writing campaign of the Union of Concerned Scientists (UCS), in which UCS and its supporters asked the FTC to punish a trade association for an issue advocacy ad. WLF had filed comments on May 17, 2005, arguing that issue advocacy ads are constitutionally protected. The ad in question, which the Alliance of Automobile Manufacturers placed in Capitol Hill publications such as Congress Daily, called attention to improvements in auto emissions. UCS's campaign disputed the ad's claim that today's cars are "virtually emissions free" because they emit carbon dioxide. The FTC agreed with WLF's view that the ad was protected speech.

Comments on Proposed Regulation of Television Product Placements. The Federal Trade Commission issued an opinion letter on February 10, 2005, rejecting a petition from an activist group urging greater regulation of product placement on television. The pro-regulatory petition had been filed by Commercial Alert, an activist group co-founded by Ralph Nader. The FTC's ruling was a victory for WLF, which was the only public interest organization to file comments in opposition to the Commercial Alert proposal. In its comments filed on March

26, 2004, WLF pointed out that the FTC had rejected a similar petition targeting film product placement in 1992 on the basis of a lack of consumer injury, and WLF observed that Commercial Alert gave no reason to overturn that determination. WLF further argued that even if Commercial Alert could show some harm from product placements, the proposed regulations would violate freedom of speech, as defined in U.S. Supreme Court cases.

Comments on Ban of Alcohol Serving Facts. On September 26, 2005, WLF filed comments with the Alcohol and Tobacco Tax and Trade Bureau (TTB) requesting the TTB to revoke its ban on truthful alcohol labeling that discloses basic information to the consumer. WLF contended that such a ban violates sound public policy and the First Amendment commercial free speech rights of the alcohol industry. In its submission, WLF argued that proposed labels on alcoholic beverages that contain so-called "Serving Facts" (listing the serving size of the beverage, the number of servings per container, and the amount of alcohol per serving) benefit consumers, are in the public interest, are truthful and not misleading, and are constitutionally protected by the First Amendment. WLF's comments were filed as part of a larger rulemaking proceeding where TTB is soliciting public comments on a wide range of alcohol labeling and advertising issues.

Comments on Constitutionality of Proposed Tobacco Legislation. On September 24, 2003, WLF submitted to U.S. Senator Jeff Sessions its analysis of proposed legislation that would impose severe federal controls on tobacco advertising and marketing. WLF completed the analysis at Senator Sessions's request. WLF concluded that the bill violates the First Amendment because it would prohibit vast amounts of truthful advertising yet it is not narrowly tailored to achieve its stated goals - reduction of tobacco use by youth and adults. The bill would write into law 1995 FDA tobacco restrictions that were never enforced because the courts determined that FDA was not authorized to issue them. WLF noted that a 2001 Supreme Court decision that struck down Massachusetts tobacco advertising restrictions on First Amendment grounds made clear that many provisions in the 1995 FDA regulations (provisions that were incorporated into the 2003 legislation) were unconstitutional.

FDA Requests for Comments on First Amendment Issues. FDA has lost several major First Amendment lawsuits in recent years, including *WLF v. Henney*. FDA responded in 2002 by requesting public input on whether any current FDA policies violate the First Amendment. On September 13, 2002, WLF filed extensive comments, citing a broad array of FDA regulatory activities that violate the First Amendment rights of those seeking to speak truthfully about pharmaceutical products. On October 28, 2002, WLF filed a second round of comments, responding to arguments (made by several U.S. Senators in connection with the initial round of comments) that public health concerns justify exempting FDA from First Amendment constraints applicable to other government entities. WLF criticized the contention of those Senators that consumers are likely to misuse truthful information. FDA has pledged to address these First Amendment concerns, but recent events suggest that FDA is considering further restrictions on speech rights. FDA conducted hearings on November 1 and 2, 2005, at which it considered proposals to restrict direct-to-consumer (DTC) advertising. Many hearing witnesses advocated severely limiting drug ads, calling them inherently biased and misleading. WLF attorneys countered by testifying that DTC advertising has played a vital public health role in recent years by increasing consumer awareness of treatment options. WLF asserted that FDA officials need to rein in their efforts to suppress advertising, and step in only when advertisements are likely to mislead consumers.

Comments on Labeling of "Alcopops." On July 23, 2001, WLF filed comments with BATF, expressing strong opposition to a request from the Center for Science in the Public Interest (CSPI) that BATF revoke existing labels for sweet-tasting malt-based alcoholic beverages (referred to by CSPI as "alcopops"). WLF argued that CSPI failed to identify any portion of such labeling that is in any way misleading to consumers or is otherwise in violation of BATF regulations. WLF also argued that any effort to prohibit "alcopop" manufacturers from disseminating non-misleading product labeling would violate their First Amendment rights to engage in truthful commercial speech.

2. Property Rights of Businesses and Landowners

One of the highest responsibilities of civil government is the protection of persons and property. But what happens when the government itself seeks to invade the property rights of businesses and citizens? The Fifth Amendment to the U.S. Constitution answers this question with its guarantee that "private property" shall not "be taken for public use, without just compensation." WLF works to keep this guarantee alive by litigating in property rights cases across the country.

MacPherson v. Dep't of Admin. Svcs. On February 21, 2006, the Oregon Supreme Court issued a decision upholding the legality of a ballot measure adopted by the voters for the protection of landowners' rights. The decision reversed a trial court ruling that found the ballot measure to be a violation of the Oregon Constitution. WLF had filed a brief in the state Supreme Court supporting the ballot measure on December 5, 2005. The case was a challenge to the constitutionality of Ballot Measure 37, an Oregon ballot measure protecting landowners who suffer a loss in the value of their property on account of land use regulations. After the passage of the measure in 1994, a state trial court held it invalid under various provisions of the Oregon Constitution. In its brief, WLF argued that the trial court had erred in its ruling under the Equal Privileges and Immunities Clause of the Oregon Constitution; the state Supreme Court agreed.

Franklin Savings v U.S. On March 28, 2005, the U.S. Supreme Court declined to review a lower court decision that adversely affects the property rights of businesses that are heavily regulated by the government. The decision was a setback for WLF, which had filed a brief urging the Court to grant review. The appeals court ruled that since the savings industry is heavily regulated, the government may effectively take over a private institution and deplete its assets without having to pay compensation to its owners under the Takings Clause of the Fifth Amendment. WLF's brief argued that if the decision were allowed to stand, it would threaten the property rights of many other heavily regulated businesses and industries. WLF also argued that the appeals court decision was at odds with Supreme Court precedent, including decisions that grant Takings Clause protections to wireless telephone spectrum licenses – even though such licenses are heavily regulated by the federal government.

San Remo Hotel v. City and County of San Francisco. On June 20, 2005, the U.S. Supreme Court upheld an appeals court decision that essentially bars assertion of Takings Clause claims in the federal courts and relegates such claims to state court. The decision was a setback for WLF, which had filed a brief urging that property owners be given a right to insist that their Fifth Amendment claims at some point be heard in federal court. WLF filed its brief on behalf of the Chamber of Commerce of the United States. A silver lining in the decision: a

concurring opinion signed by four Justices indicated that they may well be willing to overrule the 1985 decision that forces Fifth Amendment claimants to file their initial suit in state court. In this case the California Supreme Court had voted 4-3 to deny a hotel owner's state-law claim that San Francisco improperly seized more than \$500,000 of his property. The U.S. Supreme Court upheld the federal appeals court's determination that the hotel owner's loss in state court barred him from filing a new suit in federal court – even though the hotel owner was raising his federal constitutional claim for the first time in the federal proceedings. WLF argued that the appeals court decision contradicts the strong federal policy of permitting litigants to assert their federal constitutional rights in a federal forum.

RUI One Corp. v. City of Berkeley. On January 10, 2005, the U.S. Supreme Court declined to review a lower court decision that upheld a Berkeley, California ordinance that imposed huge new liabilities on a company that operates a restaurant on land owned by Berkeley. The decision was a setback for WLF, which filed a brief urging the Court to grant review in order to prevent governments from adopting laws that impose increased costs on their lessees, above and beyond the costs imposed by the lease agreement. WLF argued that the ordinance violated the U.S. Constitution's Contract Clause, which prohibits state and local governments from passing any laws that "impair the obligation of contracts." WLF argued that before imposing the liabilities on the restaurant, Berkeley had signed a binding contract in which it agreed not to adopt laws imposing additional costs on the restaurant beyond those specified in the lease.

GDF Realty Investments v. Norton. On June 3, 2005, U.S. Supreme Court declined to review and reverse a court of appeals decision that gives the Department of Interior's Fish & Wildlife Service essentially unlimited authority to regulate local land development across the country in the name of protecting endangered species, including plants and bugs, that are local in nature and do not affect interstate commerce. The decision was a setback for WLF, which filed a brief urging that review be granted. In this case, the Fish & Wildlife Service denied a permit to GDF Realty to develop its property and threatened the company with criminal prosecution because it might disturb various species of beetles that live only in certain nearby caves in Texas. The bugs spend their entire lives underground and have absolutely no commercial value.

Esplanade Properties v. City of Seattle. On June 16, 2003, the U.S. Supreme Court declined to hear a case that raised the issue of whether property owners generally are entitled to compensation when government environmental regulations prevent them from making any economically productive use of their property. The one-sentence order declining review was a setback for WLF, which on April 7, 2003 filed a brief urging the Court to hear the case and to overturn a lower-court decision declining to award compensation. The case involved an effort by the City of Seattle to prevent further development of its waterfront. WLF argued that if Seattle wishes to prevent development, the costs should be borne by all citizens rather than by a few unlucky landowners.

Rogers Machinery, Inc. v. City of Tigard. On March 10, 2003, the U.S. Supreme Court denied review in this important takings case. On December 17, 2002, WLF filed a brief urging the Court to review a lower court ruling upholding the imposition of development impact fees. The City of Tigard, Oregon, imposed a so-called traffic impact fee (TIF) of approximately \$32,000 upon Rogers Machinery as a condition for granting the company a building permit to construct a new office building next to its current headquarters to relieve

overcrowding. The TIF fee is designed to help the city and county fund road improvements for traffic that would be generated by the new building; however, because no additional employees were hired by Rogers, the construction of the building did not generate any new traffic. In its brief, WLF argued that the same judicial scrutiny should apply to development fees as is applied in land dedication or easement exaction cases.

McQueen v. South Carolina Department of Health and Environmental Control. On November 3, 2003, the Supreme Court declined to hear this case. On July 28, 2003, WLF filed a petition for writ of certiorari in the U.S. Supreme Court seeking review of an adverse ruling by the Supreme Court of South Carolina. That court ruled that even though a land use regulation had the effect of destroying all economic value of private property, the government is not subject to the Takings Clause of the Fifth Amendment because the property is allegedly held in the "public trust." In so ruling, the Court accepted arguments made by regulators and activist environmental groups, and rejected arguments made by WLF on behalf of its client that the Fifth Amendment and U.S. Supreme Court precedent requires just compensation when a regulation destroys all economic value and use of the property.

Phillips v. WLF. On March 31, 2003, the U.S. Supreme Court vacated a decision from the U.S. Court of Appeals for the Fifth Circuit, which had given WLF a major victory in its long-running battle against the Texas IOLTA (Interest on Lawyers' Trust Accounts) program. The Supreme Court remanded the case to the Fifth Circuit for reconsideration in light of the Court's March 26 decision in *Brown v. Legal Found. of Washington*, which upheld the Washington State IOLTA program. IOLTA is a program under which states require attorneys to put client funds into special IOLTA accounts, with the interest generated by the accounts being used to finance legal activist organizations; nearly \$150 million is raised each year in this manner for legal aid groups. In a landmark 1998 decision, the Supreme Court ruled in this case that interest earned on IOLTA accounts is the private property of the clients whose funds generated the interest. That victory still stands. On October 30, 2003, the Fifth Circuit granted WLF's request that the case be dismissed.

Brown v. Legal Found. of WA. On March 26, 2003, the U.S. Supreme Court upheld Washington State's IOLTA (Interest on Lawyers' Trust Accounts) program, rejecting by a 5-4 vote WLF's claim that the program violated the Fifth Amendment's Taking Clause. Under IOLTA programs, client funds held in trust by attorneys and real estate professionals must be placed into special IOLTA accounts, with interest generated by the accounts being paid to a variety of legal aid organizations. The Supreme Court's ruling leaves open another ground upon which WLF had challenged the program: that the program violates the First Amendment rights of those who are forced to contribute to causes with which they disagree.

Tahoe Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency. On April 23, 2002, the U.S. Supreme Court ruled that a government is not automatically required to provide compensation to property owners when it prohibits all use of property, so long as the prohibition is only temporary. WLF had argued that the Fifth Amendment's Takings Clause requires government to provide just compensation *whenever* it takes private property, and it does not contain an exception for takings that are only temporary. Declining to overturn a decision from the U.S. Court of Appeals for the Ninth Circuit that denied compensation to Lake Tahoe property owners, the Supreme Court ruled that compensation claims filed in response to temporary moratoria on land use should be judged on a case-by-case basis.

Machipongo Land and Coal Co., Inc. v. Commonwealth of Pennsylvania. On May 30, 2002, the Pennsylvania Supreme Court reversed a lower court decision and rejected a takings claim filed by a coal company alleging that restrictions on coal mining constituted a regulatory taking entitling the company to just compensation under the Fifth Amendment. WLF had filed a brief with the Court on June 29, 2001, urging the Court to affirm the lower court decision. WLF argued that the court ought to affirm that Pennsylvania owes compensation to coal owners whose property was declared “unsuitable for mining.” WLF noted that the U.S. Supreme Court has reinvigorated the Takings Clause by limiting the discretion of land use authorities to regulate property without paying compensation.

San Remo Hotel v. City and County of San Francisco. On March 4, 2002, the California Supreme Court rejected arguments by WLF that a government regulation requiring hotel owners to pay exaction fees to ease the shortage of low-income housing in San Francisco constituted a taking of private property requiring just compensation. On April 11, 2001, WLF had filed a brief with the California Supreme Court, arguing that the Constitution’s Takings Clause obligates San Francisco to compensate a hotel owner for a \$500,000 exaction the city imposed when it required hotel owners to pay for the privilege of renting a greater portion of its rooms to tourists than it rented out as of a certain date in 1979. WLF argued, first, that U.S. Supreme Court decisions interpreting the Takings Clause have considerably reduced the deference owed to local land use authorities. WLF further demonstrated that monetary exactions, such as the one imposed under the “hotel conversion ordinance” at issue in this case, require heightened judicial scrutiny. And WLF argued that San Francisco cannot evade its constitutional duty to compensate the hotel owners simply by redefining the owners’ property rights out of existence.

Palazzolo v. Rhode Island. On June 28, 2001, the U.S. Supreme Court handed WLF a victory when it held that a state may not regulate property into uselessness without paying compensation, simply because the owner acquired the property after the regulation became effective. In addition, the Court held that an owner need not submit his constitutional claim for “just compensation” for endless rounds of bureaucratic review in order for that claim to be “ripe” for adjudication. This case arose from Anthony Palazzolo’s efforts over more than 40 years to develop his coastal land. The state government blocked those efforts by denying him permission to build, because it deemed most of his property wetlands. Mr. Palazzolo then took his case to court, claiming that the state’s denial of permission had the effect of “taking” his property without “just compensation,” in violation of the Fifth Amendment to the Constitution. In its brief filed with the Supreme Court, WLF had argued that the Court should consider revisiting a major part of its Takings Clause jurisprudence by largely abandoning its reliance on a property owner’s “reasonable investment backed expectations” in determining when a taking has occurred.

3. Confiscation of Trade Secrets and Other Intellectual Property

Today, a company’s most critical assets almost always include its intangible intellectual property – its trade secrets, its patents, its confidential business records, and more. The protection of these interests against unlawful confiscation by government agencies or in civil courts is a growing component of WLF’s docket.

CONFIDENTIAL

Metro-Goldwyn-Mayer Studios v. Grokster. On June 27, 2005, the U.S. Supreme Court held that a company whose file-sharing software allows others to illegally copy and disseminate copyrighted music and films on the Internet also itself violates the copyright law. The decision addressed several important and previously undecided copyright law issues. WLF had filed a brief in November 2004, urging the Court to address these issues. Copyright laws protect owners of the copyrighted work from having their music or films downloaded without paying the owner a royalty fee. Grokster enables computer users to share music and film files between each other utilizing so-called "peer-to-peer" services, usually violating the copyright laws. Consequently, major motion picture studios and record companies sued Grokster, instead of the users, to stop the service that allows the illegal file sharing on the theory that Grokster is guilty of contributory infringement rather than direct copyright infringement. The Court ruled against Grokster but in a manner unlikely to inhibit developers of innovative software products.

Frankl v. Goodyear Tire & Rubber Co. On July 28, 2004, the New Jersey Supreme Court affirmed the reversal of a trial court decision that had ordered the release of internal corporate documents belonging to Goodyear. The decision was a victory for WLF, which filed a brief arguing that internal documents do not become fair game for public release simply because they have been made available to the opposing party in a lawsuit. The trial court had ordered release of 14 documents on the ground that Goodyear had made an insufficient showing that the documents contained trade secrets. In affirming the appeals court's reversal of that decision, the New Jersey Supreme Court agreed with WLF that the public has no right of access to documents that have not been introduced as evidence in a court proceeding. Rather, such documents remain fully private even after being produced in connection with litigation, and even the opposing party may not disclose the document if it is subject to a court-imposed protective order.

Consumers Union v. Suzuki Motors Corp. On November 3, 2003, the U.S. Supreme Court let stand a 2002 appeals court decision that reinstated a product disparagement suit filed by a car manufacturer against the magazine *Consumers Report*. The appeals court had ruled that a business is entitled to bring tort claims to protect its good name from false reports, and the Supreme Court declined to review that ruling. The Supreme Court decision was a victory for WLF, which filed a brief in the case in support of the plaintiff, Suzuki Motor Corp. In allowing the case to proceed, the appeals court agreed with WLF that a product disparagement plaintiff need not present evidence directly demonstrating that the defendant acted with actual malice; rather, it is sufficient to present evidence (as did Suzuki) from which malice can be inferred.

Philip Morris, Inc. v. Reilly. On December 3, 2002, the U.S. Court of Appeals for the First Circuit in Boston enjoined enforcement of a Massachusetts law that would have entailed the confiscation of trade secrets worth billions of dollars. The decision was a victory for WLF, which filed several briefs in the case, urging that the law be overturned. The court agreed with WLF that because Massachusetts is unwilling to pay for the property it is attempting to confiscate, its actions violate the Takings Clause of the Fifth Amendment. The case involves the State's efforts to obtain a detailed list of additives in each tobacco product sold in the State and then release the list publicly - thereby destroying the trade secret.

J.E.M. AG Supply, Inc. v. Pioneer Hi-Bred International, Inc. On December 10, 2001, the U.S. Supreme Court ruled that genetically modified seed is eligible for patenting

under federal law. The Court agreed with WLF that in adopting the patent law, Congress intended to permit patenting of a broad range of inventions, including living organisms. . . .

Chicago Tribune Co. v. Bridgestone/Firestone, Inc. On August 28, 2001, the U.S. Court of Appeals for the Eleventh Circuit ruled that courts may not order the release of a company's trade secret documents based solely on the news media's argument that the public may have a strong interest in seeing the documents. The decision was a victory for WLF, which had filed a brief in the case opposing disclosure. Overturning a trial court order requiring disclosure, the appeals court agreed with WLF's argument that internal company documents are not fair game for public release simply because they have been made available to the opposing party in a lawsuit – unless the documents become evidence in a public trial. WLF had also argued that to the extent that public safety requires the release of company documents, the release should be ordered by the appropriate government regulatory agency – not at the behest of plaintiffs' attorneys who hope to use those documents to bring additional lawsuits.

4. Unlawful Government Regulation and Taxation

When government regulators and taxing authorities take action outside the law – in violation of their statutory mandate or in violation of constitutional limits on congressional authority – WLF is a voice for respecting the law. WLF presents a public interest perspective in such cases when there is a significant public policy interest at stake.

McLane Western, Inc. v. Department of Revenue. On June 12, 2006, WLF filed a brief in the U.S. Supreme Court, urging it to review (and ultimately overturn) a court decision upholding a Colorado excise tax that imposes higher taxes on out-of-state companies than on Colorado companies. WLF argued that taxes, such as the Colorado tax at issue here, that discriminate against interstate commerce violate the Constitution's Commerce Clause. WLF also argued that such taxes interfere with the unrestricted flow of commerce and can damage the national economy. The petitioner in this case purchases the products subject to the tax fairly late in the distribution chain, from an out-of-state distributor. The "tax base" used in computing the excise tax is the purchase price paid by whichever distributor first brings the products into Colorado. Thus the petitioner pays a higher tax than when the same products are brought into the State at an earlier stage of the distribution chain (before all distribution mark-ups have been added to the price).

Kiley v. Calif. Dep't of Alcoholic Beverage Control. On May 24, 2006, the California Supreme Court issued an order declining to review the dismissal of a suit designed to impose significant restrictions on flavored malt beverage (FMB) sales by increasing taxes and prohibiting their sale in convenience and grocery stores statewide. The decision was a victory for WLF, which had filed a brief urging that review be denied because the appeals court had acted properly in dismissing the suit. WLF argued that California's long-standing policy of classifying FMBs as "beer" for regulatory purposes fully complies with California law. WLF further argued that the appeals court properly deferred to the Department of Alcoholic Beverage Control's (ABC) interpretation of relevant statutes. WLF argued that further review of the case was particularly unwarranted in light of the California legislature's ongoing review of FMB sales regulations; WLF argued that it makes little sense for the Court to review the ABC's compliance with existing statutes given that those statutes may be amended in the near

future. WLF also argued that there is no evidence that sales of FMBs are targeted to those under 21.

DaimlerChrysler Corp. v. Cuno. On May 15, 2006, the U.S. Supreme Court overturned an appeals court ruling that had struck down a state program of tax incentives for economic development. The decision was a victory for WLF, which filed a brief asking that the appeals court decision be overturned. The appeals court held that an Ohio tax incentive program violated the Constitution's "dormant" Commerce Clause because it provided benefits to companies doing business in Ohio but not to those operating outside the state. The Supreme Court did not reach the merits of the Commerce Clause issue. Rather, it held that the appeals court should never have considered the issue because the plaintiffs (Ohio taxpayers) lacked "standing" to raise it. WLF's brief had challenged the plaintiffs' standing and had also argued that the Ohio program is constitutional because it does not in any way penalize companies that choose to do business outside the state.

United States v. Rx Depot, Inc. On February 22, 2006, the U.S. Court of Appeals for the Tenth Circuit in Denver declined an opportunity to prevent FDA from exercising enforcement powers that the evidence suggests were never delegated to it by Congress. The court's decision, affirming FDA's authority to seek a massive damage award against an internet pharmaceutical distributor, was a setback for WLF, which had filed a brief urging the court to deny FDA that authority. In its brief, WLF argued that FDA has no power to seek disgorgement or restitution from companies alleged to have violated federal drug laws. WLF argued that Congress has spelled out precisely what enforcement powers it has given to FDA, and that disgorgement and restitution are not among them. WLF argued that FDA, throughout most of its history, never asserted a right to seek disgorgement; WLF charged that FDA only recently began asserting that power, to have a big club with which to intimidate manufacturers who might otherwise seek to challenge FDA. The case involves a company accused by FDA of brokering illegal purchases by American consumers of prescription drugs from Canadian pharmacies. The case now returns to the trial court, where FDA is seeking disgorgement of profits as a remedy; the several million dollars sought to be disgorged vastly exceeds the maximum fine permitted under the FDCA.

United States v. Lane Labs-USA, Inc. On October 21, 2005, the U.S. Court of Appeals for the Third Circuit in Philadelphia issued a decision virtually identical to the Tenth Circuit's decision in *Rx Depot* (see above). The court's decision, upholding a massive \$109 million restitution award against a dietary supplement manufacturer, was a setback for WLF, which had filed a brief urging the court to overturn the award. WLF had argued that FDA has no power to seek restitution from manufacturers alleged to have violated the Federal Food, Drug, and Cosmetic Act (FDCA). WLF argued that Congress has spelled out precisely what enforcement powers it has given to FDA, and that restitution is not among them. The Third Circuit disagreed; it upheld FDA's authority to seek restitution, finding that the FDCA's grant of authority to "restrain" violations of the Act should be read broadly to include all forms of injunctive relief. The case involved a dietary supplement manufacturer accused by FDA of improperly promoting its products as a treatment for cancer; it was ordered to refund to consumers all money used to buy its products.

National Cable & Telecomm. Ass'n v. Brand X Internet Services. On June 27, 2005, the U.S. Supreme Court ruled that the Federal Communications Commission (FCC) could properly decide not to impose burdensome regulatory requirements on the delivery of

broadband Internet access by cable companies. The decision was a victory for WLF, which filed a brief with the Court supporting the FCC's position. The case arose from a decision by the FCC to treat cable modem service as an "information service" rather than a "telecommunications service." The decision meant that cable modem providers (local cable television companies) would not be required to share their lines with other providers of Internet. In its January 18, 2005, brief before the High Court, WLF argued that the FCC's decision was sound policy because the broadband market is a competitive battlefield between cable companies and local telephone companies (providers of DSL service) and that further competition is on the horizon in the form of new technologies for broadband service.

Alliant Energy Corp. v. Bridge. On January 12, 2004, the U.S. Supreme Court declined to hear a challenge to a Wisconsin state law that regulates the investments and stock sales of non-Wisconsin companies. WLF had filed a brief supporting the petition for review, arguing that the law violates the Commerce Clause of the U.S. Constitution by regulating the out-of-state activities of out-of-state corporations. In its brief, WLF argued that state laws such as Wisconsin's that directly control extraterritorial commerce - commerce occurring wholly outside the state's borders - are *per se* invalid under the Commerce Clause.

Overfelt v. McCaskill. On August 12, 2002, the Missouri Court of Appeals affirmed a lower court ruling that upheld a proposed ballot initiative to raise taxes on tobacco products, despite finding that the State Auditor failed to conduct a study of the fiscal impact of the initiative upon local governments as required by Missouri's initiative and referendum law. Under Missouri law regarding the certification of ballot initiatives, the State Auditor is required to conduct a fiscal impact of the measure and prepare a fiscal note describing that impact, and also prepare a fiscal note summary, which is a component of the ballot title. Missouri law requires the State Auditor to assess the fiscal impact of the measure on both state *and* local governments. The Auditor neglected altogether to assess the initiative's impact on those local jurisdictions that impose a local tax on cigarettes in addition to the state tax.

Washington Legal Foundation v. U.S. Dep't of Labor. On March 7, 2001, the U.S. House of Representatives handed WLF a noteworthy victory when it invoked the never-before-used Congressional Review Act to repeal the Occupational Safety and Health Administration's (OSHA) ergonomics standard. Agreeing with WLF, the proponents of this repeal measure argued that the ergonomics rule was poorly tailored to protect workplace safety and represented a boon to plaintiffs' lawyers, who were expected to take full advantage of the vague and ambiguous language of the rule to bring lawsuits against a wide range of businesses. WLF filed a lawsuit against OSHA on December 7, 2000, charging that the ergonomics standard was improperly promulgated. OSHA's ergonomics standard would have required virtually every employer in the country to establish a program designed to guard against employee injuries caused by repetitive motions, such as lifting objects or typing on a keyboard. Among other things, the standard would have also required employers to give paid leave to employees complaining that repetitive workplace motions were causing them pain.

Flue-Cured Tobacco Cooperative Stabilization Corp. v. EPA. On December 11, 2002, the U.S. Court of Appeals for the Fourth Circuit ruled that companies adversely affected by the Environmental Protection Agency's (EPA) designation of second-hand smoke as a Group A ("known human") carcinogen do not have the right to seek judicial review of that designation. The court held that EPA's designation was not "final agency action" subject to review under federal law. WLF had filed a brief in the case in support of the plaintiffs,

arguing that individuals and businesses can be severely damaged by a federal government designation that their product causes cancer and thus ought to be permitted judicial review of the propriety of such designations.

B. Environmental Law Project

Environmental extremist groups, activist courts, and the media foster the false notion that the environment is always threatened by economic activities. WLF's Environmental Law Project seeks to strike a rational, proper balance between environmental protection and economic growth/property rights. The Foundation's goal: to help create a body of law that will serve as a precedent for those seeking to protect their rights to operate their businesses without undue governmental interference.

1. Abusive Criminal and Civil Enforcement

WLF believes that use of the criminal laws to enforce environmental rules should be reserved for those who flout well-known rules, knowing full well the potential for significant environmental harm. WLF regularly opposes over-zealous prosecutors who seek to criminalize good-faith disagreements over the meaning of obscure regulations. WLF also opposes activist groups that seek to use the courts to expand the scope of environmental laws beyond that intended by Congress.

Rapanos v. United States. On June 19, 2006, the U.S. Supreme Court ruled that the U.S. Army Corps of Engineers may not assert federal jurisdiction over certain wetlands that have only a tenuous hydrological connection to navigable waterways. Its reversal of a lower court decision upholding jurisdiction was a victory for WLF, which filed a brief urging the Court to reject the federal government's claim that it has regulatory authority under the Clean Water Act (CWA) over isolated "wetlands" located over 20 miles away from any navigable waterway. However, because the Court's principal opinion was supported by only four justices, with a separate opinion and rationale for reversal by Justice Kennedy providing the fifth vote for reversal, the full ramifications of the decision will be litigated in future cases. The Court's decision reins in to some extent federal regulators, who had seemingly ignored a 2002 Supreme Court ruling that Congress intended the Clean Water Act's jurisdiction to extend only over wetlands that are adjacent to navigable waterways, not over isolated wetlands that are otherwise subject to local control.

Connecticut v. American Electric Power Company. On March 2, 2006, WLF filed a brief in the U.S. Court of Appeals for the Second Circuit in New York, urging the court to reject an appeal filed by several states and environmental groups claiming that global warming is a public nuisance and that the courts should order the major power companies to restrict their carbon dioxide emissions. The States of Connecticut, New York, California, Iowa, New Jersey, Rhode Island, Vermont, and Wisconsin filed the suit in federal court in New York City claiming that global warming constitutes a legal and actionable public nuisance under federal common law. WLF argued in its brief that the district court was correct in dismissing the case on political-question grounds because the policy issues involved in the case should be resolved by the political branches rather than by a federal court. WLF argued that Congress has repeatedly rejected proposed legislation and the Kyoto Treaty that would impose mandatory

caps on carbon dioxide emissions on U.S. power companies while leaving countries such as China and India free from any constraints.

New York v. EPA. On March 17, 2006, the U.S. Court of Appeals for the District of Columbia Circuit struck down the Environmental Protection Agency's (EPA) Equipment Replacement Provision (ERP) under the New Source Review (NSR) program. As a result, many existing facilities may now be forced to install expensive retrofit technology or shut down, thereby jeopardizing thousands of jobs and reliable energy supplies. The decision was a setback for WLF, which filed a brief in the case in support of EPA's position – the only pro-free enterprise public interest organization to do so. EPA's ERP regulations were challenged by a group of states, environmental groups, and U.S. Senators. The regulations required existing manufacturing and power generating facilities to comply with the time-consuming and costly NSR procedures only when the facility underwent major modifications as opposed to routine maintenance and repair. The appeals court disagreed, holding that federal law requires compliance with NSR procedures even when routine repairs are undertaken.

Northern Alaska Environmental Center v. Norton. On July 8, 2005, WLF filed a brief in the U.S. Court of Appeals for the Ninth Circuit, urging the court to affirm a lower court ruling that upheld the Final Environmental Impact Statement (FEIS) for the oil and gas leasing program for the Northwest Planning Area of the National Petroleum Reserve in Alaska. The Northwest Planning Area consists of 8.8 million acres. WLF argued that the FEIS was more than sufficient to satisfy environmental laws, and noted that the oil and gas production would disturb less than 2,000 acres of the surface area of the Northwest Planning Area. Significant measures would also be taken to mitigate any harm to wildlife and the environment. WLF argued that domestic oil exploration and production are vital to our national security inasmuch as the United States imports over 60 percent of its oil from foreign countries, up from 36 percent after the oil crisis of 1973.

Riverdale Mills Corp. v. United States. On November 1, 2004, the U.S. District Court in Massachusetts dismissed this suit by Riverdale Mills Corporation (RMC), ruling that the EPA was not liable for malicious prosecution under the Federal Tort Claims Act. At the same time, the court excoriated the EPA for the unprofessional manner in which it conducted its investigation of RMC. In a parallel proceeding, the U.S. Court of Appeals for the First Circuit ruled in December 2004 that EPA agents did not violate the Fourth Amendment rights of the company and its owner for its warrantless search of the company's premises. WLF's initial complaint, brought under the Federal Tort Claims Act, included claims for the malicious prosecution of RMC and Knott, stemming from charges brought against them in late 1997 for allegedly violating the Clean Water Act. RMC, located in Northbridge, Massachusetts, is an environmental award-winning, energy-efficient facility that manufactures wire mesh used for lobster traps, aquaculture, erosion control, and other commercial purposes. After an EPA raid on the business by 21 armed EPA agents, the company and its owner were indicted on two felony counts. In the course of the criminal proceedings, review of EPA's investigation log revealed that a lawful pH reading of 7 had been altered to look like a 4, and that other sevens had been altered to look like twos. Faced with evidence of its own misconduct, the government dropped all criminal charges just before trial.

Blandford v. United States. On February 23, 2004, the U.S. Supreme Court denied a petition for review filed by WLF on behalf of three seafood importers and dealers who were sentenced to up to *eight years* in prison for importing "illegal" seafood. In a case that has

CONFIDENTIAL

ramifications for all regulated businesses, the seafood dealers were prosecuted and convicted under the Lacey Act for importing lobster tails from Honduras because they allegedly violated several obscure Honduran regulations, such as one requiring that frozen seafood be shipped in cardboard boxes instead of clear plastic bags. Because the seafood was shipped in plastic bags, the dealers were also charged with "smuggling," even though the shipments regularly went through Customs and FDA inspections. Because the importers paid the exporter for the seafood, they were all charged with money laundering. The Honduran government took the extraordinary step of filing a brief in the Supreme Court supporting WLF's position that the Honduran regulations were invalid. As a result of the Supreme Court's denial of review, the defendants were ordered to begin serving their prison terms in June and July 2004. In addition to representing the defendants, WLF coordinated the filing of numerous amicus curiae briefs in their support by prominent business groups. Further legal actions may include filing a petition for Presidential commutation of sentence, if the pending habeas petition is denied.

Massachusetts v. EPA. The U.S. Court of Appeals for the D.C. Circuit ruled on July 19, 2005, in favor of WLF's position that the EPA cannot be required to regulate carbon dioxide as a pollutant under the Clean Air Act. Had the court ruled in favor of the petitioners, the EPA would have been required to regulate so-called "greenhouse gases" produced by automobiles, manufacturing facilities, and other sources of carbon dioxide that petitioners claim are causing global warming. Such a ruling would, in effect, have implemented the unratified Kyoto Treaty regulating greenhouse gases. In its brief, WLF argued that the issue of global climate change and its causes has been the most prominent energy and environmental issue of recent years. WLF argued that Congress would certainly have been explicit when it enacted the Clean Air Act if it had wanted to give the EPA authority to initiate a massive regulatory program for greenhouse gases. In June 2006, the U.S. Supreme Court agreed to review the case; WLF will file a brief in the Supreme Court in the fall of 2006, again urging rejection of the claim that carbon dioxide is a "pollutant."

Petition on Improper Assessment of Cancer Risks. On March 21, 2006, WLF requested that the Environmental Protection Agency (EPA) reconsider its February 2006 decision to decline to hear a WLF petition to eliminate "junk science" from the process by which EPA determines whether a substance is likely to cause cancer in humans. In a petition filed pursuant to the Information Quality Act (IQA) in August 2005, WLF had argued that EPA guidelines for determining human carcinogenicity violate the IQA because they are not based on sound science but rather on an EPA policy judgment that extreme caution should be adopted in connection with substances that pose any possible cancer risk. EPA's response asserted that because its guidelines constitute a "policy" document, they are not subject to the IQA. WLF's March 21 reconsideration petition explains why EPA policy documents are not exempt from the IQA. In a June 27, 2006 letter to WLF, EPA said that it will respond to the reconsideration request within 90 days. WLF filed its initial petition and its reconsideration request on behalf of itself and the American Council on Science and Health ("ACSH"). ACSH recently published a study, *America's War on "Carcinogens,"* that is extremely critical of EPA's guidelines for determining cancer risks.

National Audubon Society v. Dep't of the Navy. On September 7, 2005, the U.S. Court of Appeals for the Fourth Circuit in Richmond ruled that the Navy should be permitted to go forward with planning for construction of a new North Carolina airfield, even as it prepares a new environmental impact statement (EIS) for the airfield. The decision was a victory for WLF, which had filed a brief urging the court to lift a district-court injunction

against all site-preparation and planning work. The airfield, desperately needed for pilots being trained to land planes on aircraft carriers, has been blocked by questions over the adequacy of the initial EIS. The appeals court held that a new EIS was required. But it agreed with WLF that the district court erred in blocking all work on the airfield while the new EIS is being prepared. The appeals court agreed with WLF that the district judge acted improperly in second-guessing the Navy's determination that building the base is vital for national security.

United States v. Hansen. On June 16, 2002, the U.S. Supreme Court declined to review this important environmental case. WLF had filed a brief with the Court urging the High Court to review a dangerous court of appeals decision on criminal liability. On August 24, 2001, the United States Court of Appeals for the Eleventh Circuit in Atlanta, Georgia, affirmed the convictions and unprecedented prison sentences of two officers and the plant manager of a chemical facility for violating the Resource Conservation and Recovery Act (RCRA) and the Clean Water Act (CWA). WLF had filed a brief with the court of appeals in 1999, urging it to overturn the convictions and draconian prison sentences. Several years after the plant shut down, the officers were indicted and convicted of knowing endangerment, even though no employee was ever injured. The defendants were convicted under the "responsible corporate officer" theory of liability. The court sentenced 72-year-old Christian Hansen to prison for an unprecedented term of 108 months (nine years); his son Randall was sentenced to 46 months; and the plant manager was sentenced to 78 months. The Hansens later filed habeas corpus petitions, seeking post-conviction relief; those petitions were denied in May 2004.

United States v. Alcan Aluminum Corporation. On January 12, 2004, the U.S. Supreme Court denied review in this important case. On December 15, 2003, WLF filed a brief in the Court in support of a petition for review filed by Alcan Aluminum Corporation (Alcan) seeking review and reversal of a ruling by the U.S. Court of Appeals for the Second Circuit, which required Alcan to pay \$13 million in cleanup costs for two EPA Superfund sites in upstate New York. Alcan's allegedly "hazardous substance" was essentially nothing more than water. Based on this precedent, all businesses could now be subject to costly cleanups if their wastes have even trace levels of a hazardous substance. WLF also filed a brief in the court of appeals, on behalf of numerous congressional and major business clients, including the U.S. Chamber of Commerce and the National Restaurant Association.

Washington Dep't of Ecology v. Asarco, Inc. On March 11, 2002, the Supreme Court of the State of Washington ruled that a preemptive challenge to the constitutionality of Washington's Model Toxics Control Act (MTCA), similar to the federal Superfund law, was not justiciable. WLF had filed a brief with the court, urging it to uphold a landmark trial court ruling that struck down on constitutional grounds a cleanup remediation order against Asarco, Inc. WLF argued that the offsite remediation order was unconstitutional on the grounds that applying it retroactively to Asarco violated the Due Process and the Takings Clauses of the U.S. Constitution.

Kootenai Tribe of Idaho v. Veneman; State of Idaho v. U.S. Forest Service. On December 12, 2002, the U.S. Court of Appeals for the Ninth Circuit, in a 2-1 decision, overturned a district court injunction against implementation of the Roadless Area Conservation Rules. On June 26, 2001, WLF had filed a brief with the court of appeals urging the court to uphold the district court ruling. Those rules, promulgated by the Clinton Administration on January 12, 2001, prevent road construction, timber harvesting, and other activities in over 25 percent of the National Forest System, or about 50 million acres of

forests. The rules as promulgated are seriously flawed and will have catastrophic environmental impacts, such as increased risk of insect infestation and forest fires, and will needlessly prevent public access to the forests.

Rancho Viejo, LLC v. Norton. In March 2004, the U.S. Supreme Court declined to review a court of appeals decision that would effectively remove any Commerce Clause limits on Congress's power to regulate development. In *Rancho Viejo, LLC v. Norton*, the U.S. Court of Appeals for the District of Columbia Circuit upheld the application of the Endangered Species Act to a small residential developer, which had erected a fence on its property. The Department of Interior claimed that the fence would interfere with the southwestern arroyo toad, a federally listed endangered species which is located only in California and only ranges about one mile from the streams in which it breeds. In its brief, WLF argued that the court of appeals decision would effectively undermine the Supreme Court's Commerce Clause jurisprudence. In landmark rulings, including *United States v. Lopez*, the Supreme Court has ruled that the power to regulate interstate commerce does not include the power to regulate local activity that does not substantially affect interstate commerce.

Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers. WLF scored a major victory when the U.S. Supreme Court ruled on January 9, 2001, that Congress did not give authority to the U.S. Army Corps of Engineers under the Clean Water Act to regulate the filling of isolated wetlands. In doing so, the Court did not find it necessary to address the additional issue of whether Congress has authority under the Commerce Clause to regulate such isolated wetlands simply because migratory birds were observed on the parcel. In its brief filed in 2000, WLF argued that the Corps' so-called "migratory bird rule" exceeds the authority conferred on the federal government under the Commerce Clause. The actual or potential presence of migratory birds on private property does not involve commercial transactions or economic activity, WLF argued.

2. "Environmental Justice" and Title VI

Title VI of the Civil Rights Act of 1964 prohibits federal fund recipients (such as state governments) from intentionally discriminating on the basis of race. Some environmental activists have attempted to expand Title VI to cover any action that has any sort of disparate racial impact, even impacts that are wholly unintended. Those activists then try to use Title VI as a club for their version of "Environmental Justice" – they argue that manufacturing facilities may never be built in a minority community because doing so would have a disparate impact on racial minorities. WLF regularly goes to court to oppose the "Environmental Justice" movement's distortion of Title VI.

South Camden Citizens in Action v. New Jersey Department of Environmental Protection. On December 17, 2001, the U.S. Court of Appeals for the Third Circuit overturned a trial-court decision which found that the State of New Jersey had violated federal civil rights laws even though it never intended to discriminate against any protected class of citizens. The trial court had blocked operation of a cement factory in Camden, New Jersey on the grounds that allowing the plant to operate would violate Title VI of the Civil Rights Act of 1964 (which prohibits racial discrimination by federal fund recipients) because it would have a greater impact on Camden's minority population. In reversing, the appeals court agreed with WLF that private individuals are not permitted to sue to enforce regulations promulgated under Title VI. Rather, the court held that any enforcement of the regulations must come from the

government itself. The U.S. Supreme Court later declined to review the decision, thereby leaving WLF's victory intact.

Alexander v. Sandoval. On April 24, 2001, the U.S. Supreme Court overturned a ruling that the State of Alabama had violated federal civil rights laws even though it never intended to discriminate against any protected class of citizens. The Court held that claims brought under Title VI of the Civil Rights Act of 1964 are untenable in the absence of evidence that the defendant *intended* to discriminate. The decision was a victory for WLF, which had filed a brief in the case in support of Alabama. The case was a challenge to Alabama's policy of giving its driver's license tests in English only, but has implications for Environmental Justice cases which are also based on Title VI.

Comments on Interim Guidance for Environmental Justice Complaints. On August 28, 2000, WLF filed its comments opposing the EPA's Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits. Although the guidance ostensibly provides a framework for processing complaints filed under the EPA's discriminatory effect regulations, the entire concept of enforcing "environmental justice" under the EPA's Title VI regulations is legally flawed because Title VI prohibits only intentional discrimination. WLF argued that the interim guidance is also likely to cause a significant, unjustified shifting of permit decision-making authority from the states to the federal government. WLF requested that since the guidance was legally flawed, procedurally improper, unwise, and unworkable as a matter of policy, it should be withdrawn. WLF is reviewing the EPA's so-called Environmental Justice "Toolkit" for businesses issued in December 2003, and is monitoring other recent developments in EPA's Environmental Justice Program.

C. Reining in the Plaintiffs' Bar

Many of the problems with the civil litigation system in this country can be traced to plaintiffs' lawyers filing too many frivolous cases, and then demanding excessive attorney fees as the price for dropping their claims. WLF has litigated to ensure that court-awarded fees are kept within reasonable limits, that public funds are not used to support unwarranted litigation, and that appropriate sanctions are imposed on attorneys who file frivolous suits or otherwise abuse the public trust.

1. Opposing Excessive Attorneys' Fees

The fuel that has caused the litigation explosion is the award of excessive attorneys' fees to plaintiffs' attorneys and activist groups. In class actions and other major cases, plaintiffs' attorneys routinely seek and receive huge awards that translate into rates of \$10,000 an hour and more, while class members receive worthless coupons or small awards. WLF is in the forefront of filing objections to the award of excessive attorneys' fees in class actions and other cases. In addition, WLF has petitioned the Federal Trade Commission (FTC) and State Bar associations to regulate and curb this abusive practice.

Chance v. United States Tobacco Co. On April 3, 2006, WLF filed a brief in the District Court of Seward County, Kansas, opposing a fee request by plaintiffs' attorneys for

\$22.5 million for settling a class action lawsuit where users of smokeless tobacco products will receive only coupons toward the purchase of future products. WLF argued that the coupon settlement was highly inflated, and that the court should base any fee on the hourly rate – which plaintiffs estimate would result in a \$4.6 million fee, and which defendants estimate to be more like \$3.6 million. WLF argued that a coupon settlement is worth little to consumers if few consumers actually redeem them. WLF cited cases where coupon redemption rates were only in the 3 to 6 percent range, and where part of the attorneys' fees were ordered to be paid in coupons. The recent federal Class Action Fairness Act, as well as the law in Texas, provide that fees should be based on the amount of coupons actually redeemed.

In re iPod Cases. On July 28, 2005, WLF filed objections in the Superior Court of California in San Mateo County urging the court to reject an attorneys' fee award request of \$2.7 million in a consumer class action lawsuit against Apple Computer on behalf of purchasers of Apple's iPod Digital Music Player. The plaintiffs claim that those who purchased or obtained the iPod before May 31, 2004 may have experienced problems with the battery's capability to hold a charge. The settlement calls for class members to receive a \$25 check or a coupon worth \$50 in store credit for those who file claims by September 30, 2005. On behalf of WLF's client, who owns an iPod and is a class member, WLF filed objections to the fee and class member incentive payments of \$1,500 each. WLF also argued that no fees should be paid until after all claims have been filed so the court can determine the value of the benefits to be distributed. On September 6, 2005, the court approved the settlement, but requested further documentation to justify the attorneys' fees application. After receiving the information, the court approved the fee application for lead counsel and reduced the fees requested by counsel for one of the lead plaintiffs.

Graham v. Daimler Chrysler Corp. On December 1, 2004, the California Supreme Court affirmed a lower court's rationale for awarding a consumer group attorney fees under the so-called "catalyst theory" of awarding such fees. However, the Court remanded the case to the lower court to determine the actual amount that should be paid to the activist group for filing a short-lived consumer lawsuit against a company by taking into account certain clarifications of the catalyst theory. On November 12, 2003, WLF filed a brief in the California Supreme Court urging it to review and reverse a dangerous lower court decision that could subject all companies to costly activist litigation. The lower courts upheld a huge attorneys' fees award to a consumer group for filing a lawsuit against an automobile company because of an inadvertent misprint in the owner's manual about the vehicle's towing capacity. Because the company began to change the misprint in the manual well before the suit was filed, and even offered to repurchase any vehicle, the activists' suit became moot, no relief was awarded, and the case was dismissed less than three weeks after it was filed. Nevertheless, the group was awarded almost \$800,000 simply for filing the lawsuit.

Azizian v. Federated Department Stores. On March 8, 2005, U.S. District Court Judge Sandra Armstrong of the Northern District of California approved a class action settlement among consumers, cosmetic manufacturers, and department stores that would provide class members with \$175 million worth of cosmetics; the court previously rejected an unusual "first-come, first-served" giveaway proposal. She also awarded the plaintiffs' attorneys \$24 million in fees, the full amount that they requested with no questions asked, despite her previous position that an award should only be made after the giveaway program had been completed – such a delay would have enabled the court to assess the program's effectiveness and the reasonableness of the fee risk in light of that effectiveness. On March 26, 2004, WLF

had filed objections in this class action case on behalf of a group of 33 objectors to a proposed settlement that offered class members only a chance to get a "free" item of cosmetics allegedly valued between \$18-\$25 during a one-week giveaway period if they had purchased so-called "high end" cosmetics or fragrances over the last 10 years. WLF filed further objections on June 1, 2004; during later hearings before a Special Master, WLF argued that the parties should provide more effective notice to the class about the case, and that cash or coupons would be preferable to a product giveaway. WLF further argued that the attorney fees request of \$24 million was excessive.

LiPuma v. American Express. On February 14, 2005, WLF filed a brief in federal court in Miami objecting to a proposed class action settlement against American Express Company, including \$11 million in attorney fees. The suit claimed that American Express improperly assessed and disclosed adjustments to foreign currency conversions for cardholders who used their American Express card overseas during the previous five years. The adjustments, or surcharge, amounted to 1-2 percent of the currency conversion rate. In its objections filed on behalf of a class member from Atlanta, WLF argued that the settlement was not fair, reasonable, or adequate, arguing that class members' accounts should be automatically credited without the necessity of their submitting claim forms since the account information is readily available to American Express. More importantly, WLF objected to the proposed \$11 million attorney fee as excessive, particularly because the suit appeared to be a copycat suit, filed only after a California trial court ruled against Visa and MasterCard for similar conduct. WLF also opposed so-called "incentive payments" of \$10,000 to the lead plaintiffs. On December 22, 2005, the court approved the terms of the settlement, but reserved ruling on the application for attorney fees.

Court Reporting Services, Inc. v. Compaq Computer Corp. On June 2, 2003, WLF filed objections in federal court in Texas on behalf of a consumer to the proposed award of up to one million dollars in attorney fees in a class action case where the class members will essentially receive no compensation. WLF argued that the requested fees were excessive in comparison to the relief obtained on behalf of the class members. WLF also reserved the right to file supplemental objections once the attorneys file more detailed pleadings justifying their fee request. The gist of the complaint is that Compaq's advertising and promotional literature for "Presario" computers failed to disclose certain aspects about the partitioning of the hard drives of those computers; and with respect to certain models, failed to provide backup and restoration software. The court finalized the settlement on December 31, 2004.

In re Vitamin Cases/Philion v. Lonza. The California Supreme Court announced on June 11, 2003, that it will let stand a class action settlement in which the plaintiffs' lawyers are to receive millions in fees, while consumers - their purported clients - will receive nothing. WLF had filed a brief in May 2003 in support of the objecting class members, arguing that the settlement violated California law and urging the High Court to grant review. The lower court in the case, the Court of Appeal of California, First Appellate District, had upheld the settlement, in which the consumers will have no opportunity to seek compensation of any kind. Instead, the so-called *cy pres* settlement of \$38 million was to be paid to governmental and nonprofit organizations; the plaintiffs' attorneys were to receive an award of \$16 million in fees.

CONFIDENTIAL

In re Magazine Antitrust Litigation. On May 5, 2003, WLF filed its initial objections on behalf of itself and several consumers to the proposed award of \$1.1 million in attorney fees in a class action case where the class members will receive no compensation. WLF argued that the requested fees are excessive compared to the relief obtained on behalf of the class members. WLF also reserved the right to file supplemental objections once the attorneys file more detailed pleadings justifying their fee request. This class action lawsuit was filed in October 2000 in the U.S. District Court for the Southern District of New York against the Magazine Publishers of America (MPA) and fourteen magazine publishing companies alleging that there was an agreement among the defendants since 1996 to set a minimum price of or maximum discount on magazine subscriptions through the enactment of an MPA guideline. In February 2004, WLF scored a victory when the Court denied the award of any attorney fees for the plaintiffs' attorneys because they obtained no monetary or other relief for the class members. Rather, the plaintiffs' attorneys merely required the defendants to comply with existing antitrust law.

Simon v. Schwartz. On May 7, 2003, the U.S. Supreme Court denied review in this important attorney's fee case. WLF had filed a brief with the Court, urging it to review the case, which involved the proper standard for use by trial courts in awarding attorney fees in class action settlements. WLF argued that the fees awarded in this case, which were about five times the normal hourly rate of the attorneys, were excessive; rather, the fee should have been capped at the normal hourly rate according to Supreme Court precedent. The case was a class action filed against Citibank on behalf of credit card holders claiming that the company violated the federal Truth-in-Lending Act by not crediting payments made by the card holders in a timely manner. Approximately a year after suit was filed, the parties proposed a settlement whereby the class members would share in a fund of \$18 million, injunctive relief would be granted, and the defendant would pay up to \$9 million to the attorneys, an amount later reduced to \$7.2 million. The fee award compensates the attorneys at approximately five times their normal hourly rate. Class members received checks in the mail for as little as two cents.

In re Compact Disc Minimum Advertised Price Antitrust Litigation. On June 13, 2003, the U.S. District Court of Maine upheld a proposed settlement of a nationwide class action case where the attorneys were seeking \$12.5 million in fees. The underlying lawsuits, which were filed across the country by state attorneys general and private attorneys and consolidated in the federal court in Maine, sought antitrust damages against the distributors of music compact discs (CDs) and certain retailers for engaging in a Minimum Advertised Price (MAP) program that allegedly had the effect of maintaining higher retail prices of CDs. WLF had urged the court, in a brief filed on behalf of consumer objectors, to reject the fee request as excessive. The attorneys sought \$12.5 million in fees to share with several State attorneys general. WLF argued on behalf of a group of objecting class members that the award of \$12.5 million in fees was grossly excessive due to the fact that the Federal Trade Commission (FTC) and the State attorneys general had already investigated the matter thoroughly.

Gisbrecht v. Barnhart. On May 28, 2002, the U.S. Supreme Court issued a decision that declined to restrict the size of attorney fees that can be collected from disabled Americans who win suits claiming entitlement to disability benefits under the Social Security Act. WLF unsuccessfully argued that Congress intended to limit attorney fees in such cases to "reasonable" fees because attorneys often collect an unconscionably high fees based on a percentage of the disability benefits awarded. WLF also had argued that such "contingency

fee” awards ought to be barred and that fees ought to be awarded under the “lodestar” method – under which the number of hours an attorney worked is multiplied by a reasonable hourly rate. The Court concluded, however, that lawyers may charge a contingency fee equal to 25 percent of the benefits awarded, if that was the amount the client had originally agreed to pay.

Wilson v. Massachusetts Mutual Ins. Co. WLF filed formal objections on March 2, 2001, with the First Judicial District Court of Santa Fe County, New Mexico, to the award of attorney fees of approximately \$8 million in a case where the class members were to receive no compensation whatsoever. Shortly after WLF filed its objection, the attorney withdrew his fee request. In this case, a Santa Fe lawyer filed suit against the insurance company on behalf of policyholders claiming that the company failed to disclose fully the amount of additional payments charged when policyholders choose to pay their premium on a monthly, quarterly, or semi-annual basis rather than on an annual basis. The company initially agreed not to oppose the award of an attorney fee of 1) \$5 million in cash; 2) \$250,000 annual annuity for 20 years; and 3) a \$3 million life insurance policy for the attorney. In addition, the lead plaintiff (an attorney himself) was to receive \$250,000 as an “incentive” payment for participating in the suit.

Vizcaino v. Microsoft Corp. On April 16, 2001, the U.S. District Court for the Western District of Washington in Seattle upheld the award of \$27 million in attorney fees in this class action case. WLF had filed formal objections with the court on January 24, 2001, on behalf of several class members opposed to the proposed fee award. The court initially ordered the plaintiffs’ attorneys to submit more detailed information justifying their fee. On March 29, 2001, WLF filed a response, arguing that the fee was not justified. The attorneys sought 28% of the common settlement fund of approximately \$98 million. This amounted to approximately \$27 million in fees. This lawsuit was originally filed against Microsoft in late 1992 on behalf of employees of Microsoft who were classified as temporary employees or independent contractors.

In re American Family Publishers Business Practices Litigation. On September 13, 2000, the U.S. District Court for the District of New Jersey approved the final settlement and modified the attorneys’ fee award in this class action case. On May 8, 2000, WLF had filed formal objections to the proposed settlement, on behalf of a class member. In particular, WLF objected to the proposed payment of up to \$11,750,000 in attorney fees and costs as unreasonable considering that class members were to receive payments as small as \$5.00. This class action case began in 1998 when several plaintiffs filed both state and federal class actions against American Family Publishers and their related companies for direct mail solicitation of magazine subscriptions. The plaintiffs alleged that the marketing materials sent to consumers misleadingly suggested that it was either necessary to purchase magazine subscriptions to win sweepstake prizes, or that purchasing the subscriptions or other merchandise enhanced their chances of winning a prize.

In re Synthroid Marketing Litigation. On April 15, 2003, a federal appeals court overturned a WLF victory by reversing a lower court ruling that had significantly reduced (from 29% to 10%) a requested fee award in a nationwide class action. WLF, along with WLF’s Economic Freedom Law Clinic at George Mason University School of Law, had filed formal objections to the fees request on behalf of two class members. The underlying lawsuit alleged that advertising associated with Synthroid inaccurately suggested the superiority of Synthroid over other products used to treat certain thyroid disorders, thereby deterring

consumers from purchasing less expensive alternatives to Synthroid. Under the proposed settlement agreement, the company would pay approximately \$87 million into the settlement fund for the benefit of the class members. However, the attorneys sought 29 percent of that amount, or approximately \$26 million in fees, even though the average class member would receive less than \$100. WLF objected to the requested fee as excessive.

Citizens for a Better Environment v. The Steel Company. On April 23, 2001, the U.S. Supreme Court declined to review a lower court ruling that favored plaintiffs over defendants in environmental cases. The decision was a setback for WLF, which had filed a certiorari petition seeking Supreme Court review of the case. WLF's petition argued that defendants should not be discriminated against in the award of attorney fees. On October 17, 2000, the U.S. Court of Appeals for the Seventh Circuit ruled against WLF's client, holding that companies virtually never are permitted to recover their attorney fees even when they successfully defend environmental suits brought against them. WLF's petition to the Supreme Court argued for a stop to the practice of routinely granting large attorney fee awards to environmental groups that prevail in lawsuits they file against private companies, while routinely denying fees to the companies when the environmental groups lose. Environmental groups can file what are often frivolous lawsuits with little risk of sanction, knowing that the high costs of litigation will force most defendants into quick settlements, no matter how meritorious their defenses.

Petition on Regulation of Contingency Fees at the Federal Level. On August 14, 2001, WLF filed a petition urging the FTC to crack down on abuses of the contingency fee system by attorneys. WLF argued that contingency fee practices routinely engaged in by attorneys constitute "unfair trade practices" within the meaning of the FTC Act. WLF said that FTC action was necessary because the legal profession and state bar authorities have demonstrated their unwillingness to address the contingency fee scandal, under which lawyers are pocketing billions of dollars of their clients' funds, often for minimal work. In July 2002, the FTC published a booklet for consumers advising them on how to retain an attorney, and noting that contingency fee rates are negotiable. The FTC is continuing to review the issue of contingency fees.

2. Opposing Abusive Litigation Tactics

WLF opposes litigation tactics by activists and plaintiffs' lawyers that undermine the integrity of the judicial process. WLF cases range from those involving improper pressures and influences on the judiciary, to potential manipulation of stock market prices by the collaboration between short-sellers and class action attorneys.

Rhode Island v. Lead Industries Assoc. On June 2, 2006, the Rhode Island Supreme Court said that it would defer its ruling on whether the State's Attorney General acted improperly in retaining plaintiffs' lawyers on a contingency fee basis to bring a nuisance action against companies that decades ago manufactured lead-based paint. WLF had filed a brief urging the Court to act immediately to bar such arrangements. WLF argued that such fee agreements create an inherent conflict of interest and constitute an improper delegation of a State's police powers. In its June 2 ruling, the court noted that an appeal from the underlying litigation, which alleges that the continued presence of lead paint on Rhode Island houses represents a public nuisance, is expected to reach the Supreme Court in due course. Although the court last year agreed to address the attorney retention issue on an expedited basis, the June

2 ruling said that consideration of the issue was premature until the appeal of the underlying litigation reaches the court. The court said that its review of the attorney retention issue would be assisted if it had before it, at the time of the review, the entire trial record.

Lincoln Property Co. v. Roche. On November 29, 2005, the U.S. Supreme Court overturned an appeals court decision that had made it much more difficult for out-of-state defendants to move their lawsuits from state court to federal court. The decision was a victory for WLF, which filed a brief urging that the lower court decision be overturned. The Supreme Court agreed with WLF that the lower court improperly deemed the defendant corporation a citizen of the state in which it was being sued. As a result, the corporation had been barred from "removing" the case to federal court from state court, because parties generally may invoke the federal courts' "diversity jurisdiction" only when the plaintiffs and defendants are not citizens of the same state. WLF had argued that the ability to remove a case to federal court often is crucial for obtaining a fair trial; corporations in particular often feel the need to move lawsuits to federal court, which are generally considered less hostile to out-of-state corporations than are state courts. The Supreme Court agreed with WLF that the appeals court's analysis was faulty in numerous respects. The Court held, for example, that for purposes of determining diversity jurisdiction, it is never appropriate to take into account the citizenship of parties who could have been named as defendants but were not.

American Home Products, Inc. v. Collins. On April 18, 2005, the U.S. Supreme Court issued an order declining to review an appeals court decision that makes it much more difficult for out-of-state defendants to move their lawsuits from state court to federal court. The decision was a setback for WLF, which had filed a brief urging the Court to review (and ultimately overturn) the lower court decision. The suit at issue is one filed against all the major childhood vaccine manufacturers, and threatens to drive even more manufacturers out of the market. WLF argued that the lower court defined "fraudulent joinder" in an unnecessarily narrow manner. WLF argued that plaintiffs' lawyers regularly join fraudulent defendants to their lawsuits in an effort to prevent out-of-state corporations from moving lawsuits to federal court, which are generally considered less hostile to out-of-state corporations than are state courts. WLF argued that the appeals court decision frustrates the will of Congress that cases of this sort be removable to federal court as a means of ensuring that out-of-state defendants can have their cases heard in an impartial forum.

Fullerton v. Florida Medical Association. On July 11, 2006, a Florida appellate court reinstated a defamation lawsuit filed by a doctor against the Florida Medical Association (FMA) and several other doctors, based on the defendants having instigated professional peer review of the plaintiff's expert testimony in a medical malpractice suit. The defendants had begun their investigation because they did not believe that the opinions expressed by the plaintiff doctor in his expert testimony demonstrated professional competence. The decision was a setback for WLF, which filed a brief in the case, urging that the trial court's dismissal of the case be upheld. WLF argued that both Florida law and a federal statute (the Health Care Quality Improvement Act of 1986) provide immunity from money damages to doctors who criticize their peers in connection with peer review proceedings. In reinstating the defamation lawsuit, the appeals court ruled that immunity extends only to complaints regarding a doctor's competence in treating an actual patient, not to competence in expert testimony. WLF entered the case in the trial court in 2004 because the lawsuit presented an important legal issue regarding peer review of expert testimony. Improper expert testimony is a concern of the business community, particularly in asbestos litigation, where studies have indicated that

most claims of asbestos-related diseases are backed by unfounded "expert" interpretations of screening X-rays.

In re Kensington International. In 2003 and 2004, WLF filed a total of three briefs in bankruptcy court and in the U.S. Court of Appeals for the Third Circuit, urging that a federal judge overseeing a contentious asbestos bankruptcy (filed by Owens Corning in the face of a massive number of asbestos claims) be disqualified from hearing the case because of an appearance of partiality. WLF charged that the judge hired two advisors with an impermissible conflict of interest. The highly compensated advisors were attorneys who represent asbestos claimants in other bankruptcy proceedings; WLF charged that the close relationship between the judge and his advisors created an appearance of partiality that requires the judge's disqualification. WLF won a partial victory in December 2003, when the Third Circuit directed the judge to decide no later than January 2004 whether to disqualify himself. When he declined to do so, the case returned to the appeals court. In May 2004, the Third Circuit granted WLF a major victory by disqualifying the judge, and reassigning the case to a different judge.

Stephens v. Evans. On October 14, 2004, the U.S. Court of Appeals for the Eleventh Circuit voted 8-2 to reject a challenge - brought by U.S. Senator Edward Kennedy and others - to President Bush's recess appointment of former Alabama Attorney General William Prior to a seat on the Eleventh Circuit. The decision was a victory for WLF, which filed a brief in the case in support of Judge Prior's appointment. The Court agreed with WLF that the appointment did not exceed the President's authority under the Recess Appointments Clause of the Constitution. WLF's victory became final on March 21, 2005, when the U.S. Supreme Court denied Senator Kennedy's request that it review the case.

G-1 Holdings, Inc. v. Baron & Budd. On December 11, 2001, the U.S. District Court for the Southern District of New York declined to dismiss a damages suit against attorneys who are alleged to have abused the legal process in connection with their handling of asbestos liability cases. The decision was a partial victory for WLF, which had filed a brief in the case in support of the plaintiff, a company that was driven into bankruptcy by the large number of asbestos claims filed against it. The court upheld the plaintiff's right to proceed on two grounds, including a claim that the attorneys tortiously interfered with the plaintiff's efforts to enter into economically advantageous agreements with other manufacturers. WLF argued in its brief that the complaint filed against the defendants (three plaintiffs' law firms that have dominated asbestos litigation, plus six lawyers at those firms) amounted to an allegation that they had engaged in a massive conspiracy to undermine the American judicial system. G-1 Holdings (formerly known as GAS Corp.) alleges that the law firms have been inducing potential claimants to commit perjury in order to allow the continued filing of massive numbers of nonmeritorious asbestos suits.

Southern Christian Leadership Conference v. Supreme Court of Louisiana. On May 29, 2001, the U.S. Court of Appeals for the Fifth Circuit handed WLF a victory by unanimously approving restrictions placed by the Supreme Court of Louisiana on the filing of disruptive lawsuits by activist law school clinics in Louisiana. In particular, the Fifth Circuit found that the state court's rule governing the authority of law students to represent clients in litigation was a viewpoint-neutral rule that posed no violation of the First Amendment. WLF had filed a brief in March 2000 urging the Fifth Circuit to uphold the restrictions.

D. Class Action Reform

Plaintiffs' lawyers often bring nationwide class actions as a means of coercing a settlement, without regard to the merits of the suits. In many instances, inappropriate class certifications are forcing defendants to pay large settlements – because the risk of facing an all-or-nothing verdict presents too high a risk, even when the likelihood of an adverse judgment is low. Consumers, of course, ultimately pay the price of such settlements. When the lawsuits do go to trial, they tend to be totally unmanageable, because class members typically have widely varying damages claims, and different sets of laws often apply to class members from different states. WLF has participated in numerous class action cases to present a public interest perspective in favor of reasonable limits on class actions.

Avery v. State Farm Mut. Ins. Co. On August 18, 2005, the Illinois Supreme Court overturned a massive \$1.2 billion judgment against auto insurer State Farm, which (when issued) was the largest judgment ever rendered in Illinois. The decision was a victory for WLF, which had filed three separate briefs over the course of the previous seven years, seeking to overturn the judgment. The case involved charges that State Farm defrauded its customers by requiring them to use generic parts (rather than parts manufactured by the original manufacturer) when having their cars repaired. Most consumer groups and many states favor use of generic parts as a way of holding down repair costs. In its briefs, WLF had argued that State Farm had done nothing wrong and that the suit was unlikely to benefit any consumers but could result in huge fees for the attorneys masterminding the litigation. The Illinois Supreme Court agreed with WLF that the case never should have been certified as a nationwide class action and that, in any event, the plaintiffs failed to establish breach of contract or consumer fraud. WLF's victory became final on March 6, 2006, when the U.S. Supreme Court issued an order declining to review the case.

Merrill Lynch v. Dabit. On March 21, 2006, the U.S. Supreme Court reversed a lower court's restrictive interpretation of the Securities Litigation Uniform Standards Act of 1998, or "SLUSA." The decision was a victory for WLF, which filed a brief urging that the appeals court decision be overturned. In adopting SLUSA, Congress acted to curb abusive class action claims in state court for securities fraud. The appeals court in this case read a restriction into the statute's preemption provision, holding that it allows suits to proceed in state court on behalf of persons who merely hold, rather than purchase or sell, securities. In reversing, the Supreme Court agreed with WLF that SLUSA's language preempts "holder" claims as well as purchaser and seller claims. WLF noted that SLUSA was intended to protect the federal policy of encouraging efficient securities markets by preventing circumvention of Securities Litigation Reform Act of 1995. WLF's brief also argued that a broad reading of SLUSA is consistent with principles of federalism.

Kircher v. Putnam Funds Trust. On June 15, 2006, the U.S. Supreme Court held that securities-law class action defendants do not have the right to appeal from rulings that keep securities class action cases in state courts rather than federal courts. The decision was a setback for WLF, which filed a brief urging the Court to recognize such a right of appeal. The case arises under the Securities Litigation Uniform Standards Act of 1998 (SLUSA), in which Congress acted to curb abusive class action claims for securities fraud. Congress enacted SLUSA to make federal courts the exclusive venue for most securities fraud class action litigation involving nationally-traded securities. The plaintiffs here filed security class actions

in Illinois state court against mutual fund companies. The defendants sought to have the cases removed to federal court as provided by SLUSA, but the federal district court ruled that it had no jurisdiction and sent the claims back to state court. While acknowledging that the decision to send the case back to state court likely was incorrect, the Supreme Court held that the decision could not be appealed. A silver lining in the Court's decision was its statements that the defendants were entitled to raise their SLUSA defenses in state court, defenses that almost surely will result in dismissal of this case.

In re Simon II Litigation. On May 6, 2005, the U.S. Court of Appeals for the Second Circuit in New York overturned a district court decision that certified a nationwide class action on behalf of smokers seeking punitive damages against the cigarette industry. The decision was a victory for WLF, which had filed a brief arguing that the suit would be wholly unmanageable if it proceeded as a class action on behalf of millions of smokers, each of whose claims depended on a unique set of facts. The Court agreed with WLF that certification of the class violated federal court rules. WLF also argued that certification violated the constitutional rights of both absent class members and the defendants; the appeals court did not reach that issue. WLF filed its brief on behalf of itself and the National Association of Manufacturers.

Engle v. Liggett Group, Inc. On July 6, 2006, the Florida Supreme Court rebuffed efforts by plaintiffs' lawyers to reinstate a \$145 billion punitive damages judgment against the tobacco industry, awarded by a trial court to a class consisting of all Florida smokers who have contracted diseases caused by cigarettes. The decision was a victory for WLF, which filed a brief urging that the judgment, which had been reversed by an intermediate appellate court, not be reinstated. The Supreme Court agreed with WLF that the punitive damages award was improper because it had been entered without any determination that the approximately 700,000 plaintiffs had a valid basis for recovery: there were no factual findings with respect to causation, reliance, comparative negligence, and damages. Moreover, the court said that such factual determinations are necessarily individualized and thus cannot be made on a class-wide basis – thereby precluding further use of class-action proceedings in this case. WLF filed its brief on behalf of itself and the National Association of Manufacturers.

Dura Pharmaceuticals v. Broudo. On April 18, 2005, the U.S. Supreme Court unanimously reversed an appeals court ruling that had applied a very relaxed pleading standard for attorneys filing securities class action cases against publicly-held companies. The decision was a victory for WLF, which filed a brief urging that stricter pleading standards be applied in securities fraud cases. The ruling is likely to curb abusive securities fraud cases; because such suits are very expensive to defend, corporations often make substantial payments to settle even frivolous claims. The Supreme Court ruled that plaintiffs in such cases must establish "loss causation"; that is, they must demonstrate that the drop in price of the security they held was actually caused by public disclosure of the untruthfulness of statements previously made by the defendant company. The Court noted that there may be many reasons, unrelated to the disclosure of alleged misstatements, why the price of a company's stock may drop. The Court agreed with WLF that when Congress enacted the Private Securities Litigation Reform Act in 1995, it intended to prevent class action attorneys from filing securities fraud cases based on little more than a drop in a company's stock price.

Dukes v. Wal-Mart Stores. On December 8, 2004, WLF filed a brief in the U.S. Court of Appeals for the Ninth Circuit in San Francisco, urging the court to overturn a lower court decision that certified a massive class action against retailer Wal-Mart. The suit was

filed by a small number of female Wal-Mart employees who claim that the company denied them equal pay and opportunities for promotion. But the trial court has certified them as representatives of a class of 1.6 million current and former female employees. WLF argued that the plaintiffs failed to demonstrate that the case could manageably be tried as a class action. WLF was particularly critical of the trial court's decision to rely on the testimony of the plaintiffs' "expert" witness; WLF argued that the plaintiffs failed to establish that the testimony met the standard of "scientific reliability."

Aspinall v. Philip Morris. On August 13, 2004, the Supreme Judicial Court of Massachusetts upheld a trial judge's decision to certify a massive class action based on claims of fraud. The trial judge in the case had ruled that the plaintiffs could seek damages based on phrases like "light" or "low-tar" in cigarette advertisements, even where the cigarette brand did have lower tar under Federal Trade Commission standards, and without any evidence that individual consumers were defrauded. WLF filed a brief in the Supreme Judicial Court on January 23, 2004, arguing that Massachusetts law requires individualized evidence to determine whether individual plaintiffs were, in fact, misled by the allegedly deceptive phrases. WLF further argued that under the "commonality" requirement of Massachusetts class action law, plaintiffs who have not been injured cannot be lumped together into a class with plaintiffs who were injured. Finally, WLF argued that by sweeping aside any requirement of individual causation, the plaintiffs' theory would have disastrous effects, as it would allow the bootstrapping of essentially any fraud action into a mammoth statewide class action.

Stetser v. TAP Pharmaceutical Products Inc. On July 6, 2004, the North Carolina Court of Appeals imposed strict limits on certification of nationwide class action lawsuits, in which the plaintiff seeks to sue on behalf of himself and every similarly situated person throughout the nation. The decision was a victory for WLF, which filed a brief urging that nationwide certification be overturned in this case. WLF argued that lawyers often bring nationwide class actions as a means of coercing a settlement, without regard to the merits of the suits. Such suits tend to be totally unmanageable, because class members will often have widely varying damages claims, and different laws apply to class members from different states. The trial judge in this case tried to avoid these problems by decreeing that all claims would be judged under North Carolina law. The court of appeals agreed with WLF that applying North Carolina law violated the due process rights of the vast majority of litigants who had no connection with North Carolina.

Howland v. Purdue-Pharma, L.P. On December 15, 2004, the Ohio Supreme Court overturned a lower court's decision to certify as a state-wide class action a product liability suit brought by three individuals who claim they were injured due to their use of the defendant's pain-relief medication. The decision was a victory for WLF, which filed a brief urging that the class be decertified as well as an earlier brief urging the Ohio Supreme Court to review the case. WLF argued that personal injury product liability suits are virtually never appropriate for class action treatment because the claims of each class member are unique – for example, each plaintiff must separately establish such elements of his/her tort claim as inadequacy of warning, reliance, causation, and damages. The court agreed with WLF that when, as here, individual issues of fact and law predominate over common issues, class action treatment is rarely appropriate, and that the trial court had given inadequate consideration to the "predominance" issue when it certified the class.

CONFIDENTIAL

Wilson v. Brush-Wellman, Inc. On November 18, 2004, the Ohio Supreme Court overturned a lower-court decision that certified a class action consisting of thousands of individuals who worked at an Ohio manufacturing facility over the past half-century. The decision was a victory for WLF, which filed a brief in the case urging that the class be decertified. The court agreed with WLF that certification of the class was wholly inappropriate given the widely disparate claims of each of the class members. The case involves workers at an Ohio plant used for producing beryllium alloy; the plaintiffs have no symptoms of disease but want the plant owner to pay to establish a medical monitoring program for all those who have ever worked at the plant. The court ruled that certification was even less appropriate under Rule 23(b)(2) (class actions seeking injunctive relief) than under Rule 23(b)(3), the more commonly invoked class action rule. The court agreed with WLF that a case may be maintained as a class action only if the class is "cohesive"; i.e., common issues of fact and law "predominate" over issues unique to individual class members. The court also agreed that the appeals court erred when it held that the cohesiveness requirement is inapplicable to proposed class actions in which the relief requested is primarily injunctive in nature.

State Farm Mut. Automobile Ins. Co. v. Lopez. On December 6, 2004, the Texas Supreme Court issued a decision that clamps down on the excessive number of class action lawsuits being certified by state trial courts. The decision was a victory for WLF, which filed a brief urging the court to overturn an unwarranted class certification. WLF argued that many defendants are being forced by such certifications to pay large settlements, even though in many instances the suits are nonmeritorious and the cases are wholly inappropriate for class action status. In reversing the certification order, the court agreed with WLF that trial courts should not be permitted to certify a plaintiff class without simultaneously issuing a "trial plan" that explains how they intend the trial to proceed. The court said that the certification order, involving tens of thousands of insurance policy holders with conflicting interests, reflected a "certify now and worry later" approach that it deemed unacceptable. The plaintiffs allege that a mutual insurance company should have rebated a larger percentage of its profits to policyholders, rather than retaining the profits as a reserve against future losses. WLF argued that the case is frivolous, that class action certification was wholly inappropriate, and that the only people that can hope to benefit from class certification are the plaintiffs' lawyers.

Gilchrist v. State Farm Mut. Automobile Ins. Co. On November 18, 2004, the U.S. Court of Appeals for the Eleventh Circuit in Atlanta threw out a lawsuit involving antitrust claims brought on behalf of 70 million car insurance policy holders nationwide. The lower court had certified the case as a nationwide class action; the appeals court held that the case never should have been allowed to go forward at all. The decision was a victory for WLF, which filed a brief urging that the trial court decision be overturned. The appeals court agreed with WLF that the suit was essentially frivolous. But instead of merely decertifying the plaintiff class, the appeals court dismissed the case altogether. The appeals court held that the plaintiffs' antitrust claims involved the "business of insurance," a subject over which Congress has prohibited federal courts from exercising jurisdiction. The named plaintiffs (several Florida residents) had challenged an insurance industry practice of specifying use of parts manufactured by sources other than the original equipment manufacturer ("non-OEM parts") when adjusting claims for damage to insured vehicles. The insurers assert that by retaining the option to specify non-OEM parts, they encourage competition in the automobile repair parts industry and thereby reduce costs to consumers. The plaintiffs alleged that this practice violated the antitrust laws.

Peterson v. BASF Corp. On February 18, 2004, the Minnesota Supreme Court declined an opportunity to impose limitations on the certification of nationwide class action lawsuits – suits in which the plaintiff seeks to sue on behalf of himself and every similarly situated person throughout the nation. The decision was a setback for WLF, which had filed a brief urging the Court to limit the certification of nationwide class action lawsuits. The decision did not set an unfavorable precedent, however. Rather, the court invoked a complex procedural rationale for declining to consider the class action issue. This case involves claims by farmers who objected to the manner in which BASF Corp. marketed its herbicides. The trial judge tried to avoid manageability problems by decreeing that all claims would be judged under New Jersey law. WLF argued that applying New Jersey law to all claims violated the due process rights of the vast majority of litigants who have no connection with New Jersey. WLF's loss may yet be overturned: on May 2, 2005, the U.S. Supreme Court vacated the Minnesota decision and remanded the case to the Minnesota courts for reconsideration in light of a recent Supreme Court decision on federal preemption of state law.

Ysbrand v. DaimlerChrysler Corp. On November 6, 2003, the Oklahoma Supreme Court declined to reconsider its earlier decision establishing a rule that encourages widespread certification of nationwide class action lawsuits (in which the plaintiff seeks to sue on behalf not only of himself but also on behalf of every similarly situated person throughout the nation). The decision was a setback for WLF, which filed a brief urging the court to grant reconsideration. This case involves a claim by two Oklahoma residents that the minivans they purchased from Daimler-Chrysler were defective because they included air bags that could injure small children due to their rapid deployment. The trial judge sought to avoid unmanageability problems by decreeing that all claims would be judged under Michigan law, the state in which the manufacturer has its headquarters. WLF argued that applying Michigan law violates the due process rights of the vast majority of class members who have no connection with Michigan. Since class members come from all 50 states, WLF argued that the class should be decertified because any trial involving the application of the laws of all 50 states would be too cumbersome. On June 28, 2004, the U.S. Supreme Court declined a petition to review the case.

Green Tree Financial Corp. v. Bazzle. On June 23, 2003, the U.S. Supreme Court overturned a South Carolina court ruling that superimposed class action procedures onto arbitration proceedings despite the absence of any agreement among the parties to proceed in that manner. The decision was a victory for WLF, which in February filed a brief urging that the South Carolina ruling be overturned. WLF argued that allowing arbitrations to proceed as class actions would undermine the effectiveness of arbitration as an efficient alternative to litigation. The Court agreed with WLF that it is up to the arbitrator, not the state courts, to decide whether the parties in an arbitration proceeding actually agreed that their dispute could be decided on a class-wide basis. The Court further agreed that a court's role is limited to determining whether the parties have agreed to arbitration; once that determination is made, all further issues of contract interpretation are to be decided by the arbitrator.

Dow Chemical Co. v. Stephenson. On June 9, 2003, the U.S. Supreme Court announced that it was evenly split (4-4) in this important case concerning class action lawsuits. The result is that the lower court decision remains intact. On December 19, 2002, WLF filed a brief in the Court, urging it to prevent absent class members in a class action lawsuit from relitigating final judgments entered in the lawsuit. This case arises in the aftermath of a 1984 class action settlement of all claims by Vietnam War veterans against manufacturers of the

herbicide Agent Orange. After the \$180 million in settlement funds had been fully expended, two Vietnam veterans developed cancer in the 1990s. They alleged that their disease was attributable to Agent Orange exposure and that their claims should not be barred by the 1984 settlement because their interests had not been adequately represented at the time of that settlement. In its brief, WLF noted that the courts that reviewed the settlement in 1984 unanimously concluded that the settlement was fair to all absent class members. WLF argued that when (as here) that issue has been fully and fairly litigated in the trial court and has been affirmed on direct appeal, it may not be raised anew in connection with a collateral attack on the class action judgment. Allowing such attacks would be unfair to defendants who pay out funds in reliance on the finality of a settlement, WLF argued.

Farmer v. Monsanto. On April 7, 2003, the Supreme Court of South Carolina issued a decision that prevents plaintiffs' attorneys from using South Carolina courts as forums for filing unwarranted nationwide class actions against national companies. The decision was a victory for WLF, which filed a brief in the case urging the court to cut back on class actions. WLF argued that plaintiffs' lawyers often bring such nationwide class actions as a means of coercing settlement, without regard to the merits of the suits. The South Carolina Supreme Court agreed with WLF that such suits are prohibited by a South Carolina statute known as the "Door Closing Statute." The court held that in any class action filed against a company with its principal place of business in another state, only South Carolina residents may be included in the plaintiff class.

Lockheed Martin Corp. v. Superior Court of California. On March 3, 2003, WLF scored a major victory when the Supreme Court of California held that a suit for medical monitoring costs could not proceed as a class action. The plaintiffs alleged that they had been exposed to chemicals allegedly disposed of by the plaintiffs. They did not allege that they had been injured; rather, they sought to recover expenses related to medical monitoring because of their fears that they might suffer injury in the future. The Court agreed with WLF that class action status was inappropriate because members of the proposed class had faced widely varying exposure levels and thus the strength of their claims for medical monitoring varied too widely to permit the case to be considered on a class-wide basis.

General Electric Capital Corp. v. Thiessen. On June 17, 2002, the U.S. Supreme Court declined to grant review in this tort reform case, in which the Court was being asked to impose stricter limits on the certification of class action lawsuits in the federal courts. WLF argued that lower courts are certifying class actions too freely, with the result that defendants are compelled to settle claims, even when they believe the cases lack merit. In this case, an appeals court ordered the certification of a class consisting of all workers who may have been discriminated against on the basis of age. WLF also had argued that an employment discrimination claim in which the plaintiff seeks to recover damages is virtually never appropriate for class action status, because each plaintiff's claim is likely to turn on facts that are unique to his circumstances.

America Online, Inc. v. Mendoza. On October 20, 2001, review was denied in this important class action case. On September 24, 2001, WLF filed a brief with the California Supreme Court urging it to review an important business case that could have ramifications throughout the country. A California Court of Appeal had held that a forum selection clause in a consumer agreement can be voided by California courts on the basis of California's Consumer Legal Remedies Act (CLRA). If the decision is left intact, businesses operating

anywhere in the United States with customers in California can be forced to litigate any consumer complaint in California rather than in the states specified in the agreement. In this case, Mendoza, an AOL customer, brought a nationwide class action in California against the company because of disputed billing practices, despite the fact that the service agreement provides that any litigation shall be brought in Virginia where AOL is based. The Court of Appeal held that the forum selection clause in the contract agreed to by the parties was unenforceable.

Comments on Proposed Changes to Federal Class Action Rules. On January 15, 2002, WLF filed comments in support of the Judicial Conference's proposed changes to Rule 23 of the Federal Rules of Civil Procedure, the rule that governs class action litigation. WLF particularly applauded the proposed curb on excessive attorney fee awards. WLF warned, however, that the proposed changes do not go nearly far enough in correcting the rampant class-action abuses engaged in by many plaintiffs' attorneys. WLF urged that the Judicial Conference adopt further Rule 23 changes – particularly language that would make clear that mass tort action generally should not be tried on a class basis. On September 24, 2002, the Conference approved the proposed changes, which took effect on December 1, 2003.

E. Limiting Punitive Damages

Punitive damages are properly awarded to punish particularly outrageous, tortious conduct in those few instances in which regular damage awards are insufficient to punish wrongdoers and to deter similar misconduct in the future. Plaintiffs' lawyers in recent years have sought to distort this limited rationale by seeking huge punitive damages awards in virtually every case. WLF has gone to court repeatedly to limit the circumstances under which punitive damages can be awarded. WLF argues that such awards undermine economic development and often result in valuable consumer products (such as vaccines) disappearing from the marketplace altogether. When state legislatures adopt laws imposing reasonable limits on punitive damages, WLF has repeatedly gone to court to defend such laws from the inevitable assault by plaintiffs' lawyers.

City of Hope National Medical Center v. Genentech, Inc. On January 26, 2006, WLF filed a brief the California Supreme Court urging it to overturn a compensatory damages award of \$300 million along with an unprecedented \$200 million punitive damages award against Genentech, a biotech company. The company was involved in a contract dispute over royalties with City of Hope Medical Center, which held a patent on synthesized DNA material. WLF argued that if the judgment is not overturned on appeal, businesses involved in typical contract disputes risk debilitating lawsuits by plaintiffs' attorneys not only for normal contract damages, but also for multimillion dollar punitive damages awards. WLF also argued that an excessive award cannot be justified simply because a defendant can afford to pay it without being forced into bankrupt. WLF argued that punitive damages are generally awarded only to punish outrageous, tortious conduct and should not be awarded simply because a party is found to have breached a contract. WLF further argued that the damage award unfairly punishes innocent shareholders. WLF previously filed a brief urging the California Supreme Court to review the case; in February 2005, the court agreed to do so.

Johnson v. Ford Motor Co. On June 16, 2005, the Supreme Court of California rejected a \$10 million punitive damages award in a consumer fraud case, ruling that the trial court had erred by basing the award on the disgorgement of all profits earned by the defendant during its alleged wrongful conduct against consumers who were not involved in the case. WLF had filed a brief on December 9, 2004, opposing the punitive damages award. The lawsuit was filed under California's Song-Beverly Consumer Warranty Act, which requires various disclosures to car buyers and requires various remedies for consumers who experience persistent trouble with a newly-purchased car. The dealer in the case was found to have significantly misrepresented the repair record of a used Ford Taurus. The purchasers of the car brought suit against Ford Motor Co.; at trial, the jury awarded compensatory damages of \$17,811.60 as well as the \$10 million punitive award.

Lowry's Reports Inc. v. Legg Mason, Inc. The parties to this major copyright infringement case settled the appeal on June 17, 2005, after it was argued before the U.S. Court of Appeals for the Fourth Circuit, but before the court issued any decision. WLF had filed a brief in the Court on July 13, 2004, seeking to overturn a massive jury award of approximately \$20 million in punitive fines against Legg Mason simply because a Legg Mason employee forwarded electronic copies of a copyrighted financial newsletter to other employees. WLF argued that the punitive fines, although within the statutory range provided by the copyright law, were nevertheless grossly excessive, and that the fines did not comport with constitutional and procedural standards.

Simon v. San Paolo U.S. Bank Holding Co. On June 16, 2005, the Supreme Court of California reversed a lower court decision that allowed a \$1.7 million punitive damages award in a business tort case where no personal injury occurred and only economic harm was claimed. WLF had filed a brief on October 13, 2004, urging reversal of the lower court decision, arguing that the award violated the Due Process Clause of the U.S. Constitution. The lawsuit was filed by a businessman who tried unsuccessfully to buy an office building in Los Angeles from a bank. After the transaction fell through, the businessman sued for breach of contract and fraud. A jury found that there was no contract, and determined that the plaintiff's out-of-pocket losses were only \$5,000, but nonetheless awarded the heavy punitive damages. The Supreme Court of California said in its decision that the 340-to-1 ratio of punitive damages to compensatory damages was "breathtaking." It reduced the punitive damages to \$50,000, or ten times the compensatory damages.

State Farm Mutual Automobile Ins. Co. v. Campbell. On April 7, 2003, WLF scored a major victory when the U.S. Supreme Court struck down a \$145 million punitive damages award as excessive. The Utah courts had imposed the award against State Farm Mutual Automobile Insurance Company based on State Farm's refusal to settle a car accident lawsuit filed against one of its customers. The Court agreed with WLF that the award violated the Due Process Clause because it vastly exceeded any damages suffered by its insured. Indeed, the insured suffered no out-of-pocket damages, because State Farm paid the entire amount of the tort award rendered against the insured. The Campbell decision is extremely important because the Supreme Court has now made clear that punitive damage awards are never permitted to be significantly greater than the plaintiffs' actual damages. Also, if this punitive damages award had not been overturned, all policy holders would have suffered by facing increased premiums.

Ford Motor Co. v. Romo. On May 19, 2003, the U.S. Supreme Court vacated the \$290 million punitive damages award in this case involving a claim that injuries sustained in a car accident were made worse because the car's roof was not strong enough. In a victory for WLF (which filed a brief in support of the defendant), the Court remanded the case to the California courts for reconsideration in light of the Court's *Campbell* decision. WLF argued that because the plaintiffs suffered at most \$5 million in actual damages (including pain and suffering), a \$290 million punitive damages award was wildly out of line.

Rhyne v. Kmart Corp. On April 2, 2004, the Supreme Court of North Carolina upheld a North Carolina tort reform statute that imposes limits on punitive damages awards. The decision was a victory for WLF, which had filed a brief supporting the law. Designed to control out-of-control punitive damage awards, the law limits punitive damages in any case to the greater of three times the compensatory damages or \$250,000. The court affirmed a favorable ruling last year by the North Carolina Court of Appeals, which overturned a \$23 million punitive damages award imposed on Kmart Corporation in a case where damages were less than \$20,000. WLF also filed a brief in the case when it was before the appeals court. The Supreme Court agreed with WLF that the law is a reasonable legislative response to runaway jury awards and does not interfere with a plaintiffs' constitutional right to a trial by jury.

Cooper Industries, Inc. v. Leatherman Tool Group, Inc. On May 12, 2001, WLF scored a victory when the U.S. Supreme Court held that appellate courts must provide independent or de novo review of a trial court's determination regarding whether punitive damages awarded by a jury are excessive. The Court agreed with WLF that because punitive damages are private fines intended to punish the wrongdoer, both the Due Process Clause and the Excessive Fines Clause of the Eighth Amendment are implicated by such awards. Consequently, these questions of law should be reviewed de novo rather than on a less rigorous abuse-of-discretion standard that is typically used by appellate courts to review factual issues. In this case, Leatherman Tool Group claimed that Cooper Industries had competed unfairly by using a picture of one of Leatherman's products in its promotional literature. Although the jury found that Leatherman had suffered only \$50,000 in actual damages, it awarded a staggering \$4.5 million in punitive damages, an amount that exceeded the compensatory award by a factor of 90. The Supreme Court vacated the judgment and directed the appeals court to give the verdict careful scrutiny.

In re Exxon Valdez. On November 16, 2001, the U.S. Court of Appeals for the Ninth Circuit overturned the \$5 billion punitive damages award imposed against Exxon Corporation as a result of the oil spill that occurred when the Exxon Valdez ran aground in Prince William Sound, Alaska in 1989. The decision was a victory for WLF, which had filed a brief in the case, a class-action lawsuit filed in the aftermath of the spill. WLF successfully argued that the unprecedented punitive damages award could not be justified based on either of the purposes served by punitive damage awards: deterrence and punishment. The court noted that the oil spill has already cost Exxon \$3.5 billion in clean-up expenses, payment of private claims, and fines. The court agreed with WLF that such costs are, by themselves, more than sufficient to prompt Exxon and other oil companies to take all prudent measures to prevent repetition of the spill.

F. Antitrust Law Reform

Antitrust law provides important protection to consumers against abusive business practices, particularly price fixing. However, all too often antitrust law is abused by plaintiffs' lawyers who invoke the antitrust laws to prevent the very competition that the laws were intended to encourage. WLF regularly appears in federal court proceedings to ensure that antitrust law is not distorted by those bent on destroying competition.

Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co. On June 26, 2006, the U.S. Supreme Court agreed to review a lower-court decision that imposed substantial antitrust liability on a large company for engaging in "predatory buying" (i.e., buying supplies at too high a price), even though the uncontested evidence demonstrated that the company at all times sold its products at prices that exceeded its costs. The decision was a victory for WLF, which filed a brief urging that review be granted. The parties will now file a new round of briefs, with oral arguments scheduled for either December or January. WLF has pledged to file another brief in support of the petitioner, urging that the Court reverse the lower court decision. In its brief urging review, WLF argued that consumers, as well as the economy as a whole, benefit when companies bid up the prices of goods they seek and that companies should not be punished for engaging in buying competition that is good for consumers. WLF argued that the lower court decision, unless reversed on appeal, will chill pro-consumer activity by companies that seek to avoid potential antitrust liability.

Illinois Tools Works, Inc. v. Independent Ink, Inc. On March 1, 2006, the U.S. Supreme Court issued a ruling that limited antitrust actions against intellectual property owners by rejecting a presumption that the owner of a copyright or patent possesses market power under the antitrust laws. The decision was a victory for WLF, which filed a brief in the case on August 4, 2005, urging the Court to reject that presumption. In its brief, WLF argued that intellectual property has no inherent characteristics that justify shifting the burden of proof in antitrust cases onto the owners of that property. WLF argued that the Federal Circuit's burden-shifting rule would encourage frivolous nuisance suits by rendering it much easier for a suit to survive a motion to dismiss, even where the patent or copyright owner possesses no market power whatsoever. WLF also argued that the rule encourages defendants in patent infringement actions to bring antitrust counterclaims, thus bypassing the requirements of the patent misuse defense created by Congress.

Volvo Trucks North America v. Reeder-Simco GMC. On January 10, 2006, the U.S. Supreme Court issued a decision rejecting a broad interpretation of the Robinson-Patman Act. That antitrust statute prohibits certain forms of price discrimination in commercial transactions (such as transactions between manufacturers and retail sellers). The Justices accepted WLF's position that a manufacturer cannot be held liable under the Act for alleged favoritism among dealers unless the dealers were in competition with one another. WLF filed its brief on May 20, 2005, noting that the appeals court's contrary interpretation of the Act would have banned pricing practices that are common and legitimate in competitive bidding situations. WLF also filed a brief in February 2005 urging the Supreme Court to review the case; in a victory for WLF, the Court agreed to do so in April 2005.

Freedom Holdings v. Spitzer. On May 18, 2005, the U.S. Court of Appeals for the Second Circuit in New York City rejected an antitrust challenge to the Master Settlement

Agreement (MSA), the settlement that ended the massive product liability suits filed by many States against the tobacco industry. The decision was a victory for WLF, which filed a brief urging the court to reject the challenge. WLF argued that the MSA was a reasonable means of addressing a significant public health concern and should not be subject to antitrust challenge by small tobacco companies seeking to increase their market shares. The plaintiffs are two tobacco importers that import cigarettes manufactured overseas by companies other than the four major tobacco companies. The importers complain that a fee imposed on them by the MSA is a device concocted by the States and the major tobacco companies to ensure that the major companies can maintain high prices and thus recoup the fees they pay pursuant to the MSA. The plaintiffs contend that in the absence of the fees and several other features of the MSA to which they object, foreign tobacco companies could and would gain considerable cigarette market share by undercutting the prices of the major tobacco companies. The appeals court agreed with WLF that the plaintiffs had failed to establish that they would be irreparably harmed if an injunction against the MSA were denied, and thus that the plaintiffs were not entitled to a preliminary injunction pending trial.

Texaco, Inc. v. Dagher. On February 28, 2006, the U.S. Supreme Court reversed an appeals court decision that expanded the reach of the price-fixing laws with respect to joint ventures. The decision was a victory for WLF, which had filed a brief asking the Justices to reverse the appeals court decision. The litigation involved two joint ventures formed by Texaco and Shell Oil to take over the gasoline wholesaling and retailing operations of those companies in the United States. The "Texaco" and "Shell" names continue to exist as separate brands under the joint ventures. The appeals court ruled that the companies could be held liable for price-fixing because the joint ventures priced Texaco and Shell gasoline the same. The case was important to the business community because the appeals court's decision, by treating a bona fide joint venture as a cartel, created the potential for antitrust liability for joint ventures in a variety of contexts. WLF also filed a brief in January 2005, urging the Court to review the case; it agreed to do so in June 2005.

3M Company v. LePage's, Inc. On June 30, 2004, the U.S. Supreme Court without comment declined to review a lower-court decision that imposed substantial antitrust liability on a large company for engaging in "predatory pricing" (*i.e.*, for selling its products at too low a price), even though the uncontested evidence demonstrated that the company at all times sold its products at prices that exceeded its costs. The decision was a setback for WLF, which filed a brief urging that review be granted. WLF argued that consumers benefit when companies lower their prices and that companies should not be punished for engaging in price competition that is good for consumers. The case involved an antitrust case filed against 3M Company, the dominant firm in the market for transparent tape. The suit was brought by a far-smaller competitor whose share of the tape market is about 10%. WLF argued that the lower-court decision, unless reversed on appeal, would chill pro-consumer price cuts by companies that seek to avoid potential antitrust liability.

Andrx Pharmaceuticals, Inc v. Kroger Co. On October 12, 2004, the U.S. Supreme Court declined to review a lower-court ruling that agreements to settle patent disputes can amount to *per se* violations of the antitrust laws. The decision not to hear the case was a setback for WLF, which filed a brief in the case, urging that review be granted. WLF argued that parties ought to be encouraged to settle their patent disputes. By raising the possibility that settlements will be subjected to *per se* condemnation under the antitrust laws, the federal appeals court in Cincinnati is unnecessarily discouraging settlements, WLF argued. The case

involves the settlement of a patent dispute between Hoechst Marion Roussel (HMR) and Andrx Pharmaceuticals, a generic drug manufacturer that wished to market a generic version of one of HMS's patented drugs.

Valley Drug Co. v. Geneva Pharmaceuticals. On September 15, 2003, the U.S. Court of Appeals for the Eleventh Circuit in Atlanta rejected claims that agreements to settle patent disputes can amount to per se violations of the antitrust laws. The decision was a victory for WLF, which filed a brief in the case urging against blanket condemnation of such agreements. The appeals court explained that patents are intended to provide holders with the power to exclude competition; the court agreed with WLF that agreements that settle patent disputes by simply confirming patent holders' power to exclude do not violate the antitrust laws. The appeals court reversed a district court decision that had condemned a patent settlement as a per se antitrust violation. The case involves the settlement of a patent dispute between Abbott Laboratories (which held a patent to manufacture the drug Hytrin) and several companies that wished to manufacture generic equivalents of Hytrin. In October 2004, the U.S. Supreme Court denied a request to review the Eleventh Circuit's decision, thereby leaving in place a conflict between the Eleventh Circuit's decision and the Sixth Circuit's decision in *Andrx Pharmaceuticals* (see above).

In the Matter of Schering-Plough Corp. On March 8, 2005, the U.S. Court of Appeals for the Eleventh Circuit overturned a ruling by the Federal Trade Commission that would have imposed antitrust liability on two drug companies based on the settlement of a patent dispute. WLF had filed a brief on June 9, 2004, encouraging the court to overturn the FTC's ruling. The settlement agreement (involving Schering-Plough Corp., Upshur-Smith, and American Home Products) settled a dispute involving generic drug companies who wished to manufacture a drug for which Schering-Plough claimed patent rights. The FTC held that the settlement unreasonably restrained trade because the generic companies agreed to delay their entry into the market. In its brief, WLF argued that the FTC's view of patent settlements between drug companies is commercially unrealistic and counter to federal antitrust law. WLF further argued that the FTC's position would deter settlement of patent disputes. WLF also filed a brief when the matter was before the FTC. WLF's victory became final on June 19, 2006, when the U.S. Supreme Court denied the FTC's petition for review of the Eleventh Circuit's decision.

United States Tobacco Co. v. Conwood Co. On January 6, 2003, the U.S. Supreme Court declined to review the largest damages award ever granted in the history of antitrust law enforcement: \$1.05 billion. WLF had argued in its brief urging the Court to grant review that the plaintiff used "junk science" to calculate its alleged damages in a garden-variety business dispute. The plaintiff, a manufacturer of smokeless tobacco, claimed that unfair business practices allegedly employed by one of its competitors inhibited its sales growth. WLF, filing on behalf of four of the nation's leading experts in using economic models to calculate damages (including a Nobel laureate), argued that the evidence submitted by the plaintiff in support of its multi-billion-dollar damages claim failed to conform to basic norms of economic and statistical analysis.

Verizon Communications, Inc. v. Law Offices of Curtis Trinko, LLP. On January 13, 2004, the U.S. Supreme Court reversed an appeals court's unwarranted expansion of antitrust law to cover claims by a telephone customer that the owner of all telephone lines in New York City (Verizon) was failing to maintain its lines properly. The decision was a victory for WLF,

which filed a brief urging reversal. The customer (a plaintiffs' lawyer) claimed that Verizon was purposely providing poor lines in order to prevent other companies from competing with Verizon in local telephone service. The Court agreed with WLF that antitrust law should not be expanded to cover such claims. WLF had argued that use of the antitrust laws to compel the sharing of facilities would deter competition rather than encourage it, by effectively ordering a taking of a company's property – and thereby would deter that company and its competitors from investing in facilities that might be subject to forced sharing.

USPS v. Flamingo Industries. On February 25, 2004, the U.S. Supreme Court held that the U.S. Postal Service is not a “person” under the antitrust laws, and thus may not be sued under the Sherman Act when it engages in anticompetitive conduct. The decision was a setback for WLF, which filed a brief urging that the Postal Service not be given a special exemption. WLF argued that now that the Postal Service has largely been privatized and has begun competing with firms outside its traditional mail-delivery niche, it should be required to abide by the same antitrust laws that restrain the conduct of other businesses. WLF argued that in 1970, Congress enacted the Postal Reorganization Act, allowing the USPS to “sue and be sued,” and intended that the USPS be subject to antitrust laws to the same extent as its private competitors.

In re Stock Exchanges Options Trading Antitrust Litigation. On January 7, 2003, the U.S. Court of Appeals for the Second Circuit in New York City ruled that plaintiffs' attorneys should not be permitted to impose new restraints on the securities industry by bringing antitrust suits against the industry. The decision was a victory for WLF, which filed a brief in the case urging the inapplicability of antitrust law. The court agreed with WLF that the securities industry is already fully regulated under the Securities Exchange Act of 1934 and other securities laws, and that Congress did not intend to permit another layer of regulation that would lead to conflicting rules.

Microsoft Corp. v. United States. On October 8, 2001, the Supreme Court declined to hear an appeal in the federal government's antitrust suit against Microsoft. In a brief filed in September 2001, WLF had urged the Court to grant review to consider whether to throw out the judgment against Microsoft, based on misconduct by the original trial judge. Although an appeals court had found that the trial judge acted improperly by, among other things, discussing the case with newspaper reporters while the trial was ongoing; and although it had ordered that the trial judge be removed from the case, the appeals court nonetheless upheld the trial judge's finding that Microsoft had violated the antitrust laws. WLF argued that the court of appeals should have vacated the entire judgment because of the trial judge's repeated and flagrant ethical violations that called into question his impartiality.

G. Preemption of State Lawsuits/Regulation

WLF believes that it makes little sense for business activity to be subject to multiple, inconsistent layers of government regulation. Thus, when a business activity is comprehensively regulated at the federal level, it makes little sense to permit states to impose their own regulations -- whether in the form of state statutes or state-law tort actions. Whenever there is any indication that the federal government intends its regulations to “occupy the field,” WLF has regularly gone to court to prevent states from second-guessing

federal standards by imposing their own regulations. WLF opposes those who argue that lawsuits do not qualify as “regulations” subject to preemption; WLF argues that no rational business will engage in conduct that will lead to tort liability and thus that the threat of tort liability serves to “regulate” business conduct just as effectively as does a written statute.

Bates v. Dow AgroSciences LLC. The U.S. Supreme Court ruled on April 27, 2005, that buyers of pesticides and herbicides can bring state law tort claims against the product manufacturer even where the product and the product label comply with all federal regulatory requirements. The decision was a loss for WLF, which had filed a brief on November 24, 2004, asking the Court to find that federal law preempts such lawsuits. The lawsuit, brought under Texas law, is based on allegations that the herbicide Strongarm caused crop damage because its label failed to warn against use on high-pH soil. In reaching its decision, while finding some state law claims not preempted by FIFRA, the High Court reaffirmed the principle that FIFRA preempts any state law, regulation, or tort action that would impose a labeling requirement different from those of federal law.

Buckman Co. v. Plaintiffs’ Legal Committee. On February 21, 2001, the U.S. Supreme Court ruled that plaintiffs’ lawyers may not second-guess FDA product-approval decisions by filing state-law suits against the product manufacturer. The decision was a victory for WLF, which had filed a brief with the Court arguing that federal law does not permit such challenges because they undermine FDA’s authority to regulate the pharmaceutical industry. The suits here were product liability claims against the manufacturers of orthopedic screws used in spinal surgery; the plaintiffs assert that the screws never should have been permitted on the market and that FDA approved marketing only because manufacturers defrauded the FDA in connection with their product-approval applications. The Court agreed with WLF that because FDA has stood by its decision to permit marketing of the screws, federal law prohibits plaintiffs from filing state-law tort actions that in essence second-guess FDA’s approval.

Taylor v. SmithKline Beecham Corp. On March 24, 2003, the Michigan Supreme Court upheld a Michigan statute that precludes design-defect tort actions against the manufacturer of any drug that has been approved for sale by the Food and Drug Administration (FDA). The decision was a victory for WLF, which filed a brief in the case, urging that the statute be upheld. The court agreed with WLF that the Michigan legislature acted properly in adopting the statute and that it did not violate a state constitutional provision that prohibits the legislature from delegating its powers to a federal administrative agency. WLF has argued repeatedly that such measures are necessary to hold down health care costs and to ensure that low-income Americans continue to have access to quality health care.

H. Barring “Junk Science” from the Courtroom

WLF has gone to court repeatedly in an effort to ensure that scientific testimony is not admitted into evidence in a trial unless the trial judge has first reviewed the testimony and determined that it is based on theories generally accepted within the scientific community. All too often, plaintiffs’ lawyers attempt to rely on “junk science” to support claims that the conduct of deep-pocketed defendants caused the plaintiffs’ injuries.

Aguilar v. ExxonMobil Corp. ("Lockheed Litigation Cases"). On October 10, 2005, WLF filed a brief in the California Supreme Court asking the court to affirm an appeals court ruling that recognized the need for California trial judges to assess the testimony of expert witnesses for validity. The proceeding involves claims by former workers at a Lockheed aerospace plant that their exposure to five solvent chemicals in the workplace caused them to become sick with cancer. The plaintiffs seek to present an expert witness to testify that their cancer was, in fact, caused by those chemicals. The issue before the California Supreme Court is the admissibility of the testimony of that witness where none of the articles and other materials on which he relies demonstrates a link between the chemicals involved and cancer in humans. In its brief, WLF argued that the decisions of the trial court and the Court of Appeal to exclude this testimony were proper.

Zito v. Zabarsky. On May 16, 2006, the Appellate Division of the New York Supreme Court issued an order declining to reconsider a decision that permits expert testimony to be introduced in a medical malpractice case. The decision was a setback for WLF, which filed a brief urging reconsideration. WLF's brief argued that expert medical testimony must be excluded from court proceedings when it is based on "junk science." WLF argued that the testimony should have been excluded because the medical conclusions reached by the "experts" lacked support in the medical literature. The American Medical Association also urged the appeals court to reconsider its decision. WLF argued that allowing the "expert" testimony in this case was particularly inappropriate because it consisted of a claim that an FDA-drug had caused the plaintiff's disease, yet the drug in question has been marketed for decades without any indication in the medical literature that the drug can trigger that disease.

Kumho Tire Company, Ltd. v. Carmichael. On March 22, 1999, the U.S. Supreme Court handed WLF a victory when it unanimously ruled that the criteria outlined in *Daubert v. Merrell Dow Pharmaceuticals* (its 1993 decision governing the admissibility at trial of expert testimony involving scientific matters) apply as well to all expert testimony, including the technical and engineering issues that were involved in this product liability case. WLF had urged that interpretation in its August 1998 brief. In this case, the plaintiff filed a product liability lawsuit against a tire manufacturer, claiming the tire failed due to a design or manufacturing defect, even though the tire was worn and had been previously repaired. The expert witness, however, never specified what the defect might be. The Supreme Court ruled that the expert's testimony was properly excluded. The Court agreed with WLF that all expert testimony must be subject to the Daubert standards, which bar admission of expert testimony that is not generally accepted among experts within the field. Otherwise, paid experts can become a roadblock to the jury's search for the truth, the Court held.

I. Abuse of the Securities Laws

Through its Investor Protection Program, WLF seeks to counsel federal policymakers and educate the public about the lawsuits that are taking millions of dollars from the assets of investors and placing that money in the hands of plaintiffs' lawyers. Class action lawsuits based on claims of securities fraud have long been a lucrative weapon for class action lawyers. Following a decline in a company's stock price, lawyers file a class action suit alleging that the company's officers knew of the stock decline before it took place and that they fraudulently failed to alert investors to the company's vulnerabilities. The lawsuits are

regularly filed without any supporting evidence. By skillfully playing the media, and by threatening to take a company to trial in America's unpredictable civil justice system, the class action lawyers can wreak havoc on stock prices. WLF is advocating regulatory and judicial reforms to protect employees, pensioners, and investors from stock losses caused by abusive litigation.

Woods v. Fox Broadcasting Co. On June 26, 2005, WLF filed a brief in the California Supreme Court urging the Court to review and reverse a court of appeal decision that would second-guess the everyday business decisions made by corporations, their directors, and majority shareholders by requiring them to maximize the value of stock option holders, even if this were detrimental to the interests of the corporation and other shareholders. In *Woods v. Fox Broadcasting Company*, the court of appeal held that when a corporation enters into a contract with a holder of stock options, there is an implied covenant of good faith in the option contract to maximize the option holder's return if the company's shareholders choose to sell their stock to a third party, even though (1) the corporation has no ability to control the actions of its shareholders, and (2) the option holder's interest may, in fact, be adverse to the corporation's and all other shareholders' best interests. WLF argued in its brief that the lower court decision has compromised the corporation's, the directors', and the controlling shareholders' ability to fulfill their respective fiduciary obligations. On August 24, 2005, the Court denied review.

Washington Legal Foundation v. SEC. On April 28, 2006, WLF settled this Freedom of Information Act (FOIA) case with the Securities and Exchange Commission (SEC). On June 30, 2005, WLF filed suit in U.S. District Court for the District of Columbia against the SEC for failing to provide certain documents WLF sought under the FOIA relating to abusive class action and short-selling practices. As part of WLF's INVESTOR PROTECTION PROGRAM, WLF has filed several complaints with the SEC requesting an investigation into the often questionable relationship between short-sellers of stock (those who sell borrowed shares of stock, in hopes of profiting if the price of the stock drops) and class action attorneys who later sue the targeted company. Such suits usually cause the stock price to drop, and short-sellers thereby profit at the expense of other stockholders. One complaint filed with the SEC by WLF in 2003 involved the short-selling of stock in J.C. Penney Co. that occurred shortly before and after the filing of a class action lawsuit against Eckerd Drug Store, which was then owned by J.C. Penney Co. WLF's SEC complaint requested that the SEC investigate whether the securities laws and regulations may have been violated with respect to the timing of the lawsuit and the communications between the short-sellers of the company's stock and class counsel suing the company. In connection with settlement of the FOIA suit, the SEC agreed with WLF that it had not conducted a proper search for the documents, and it provided WLF with additional documents in March and April 2006.

Baxter International Inc. v. Asher. On March 21, 2005, the U.S. Supreme Court declined to review this case, thereby passing on an opportunity to give real meaning to a 1996 federal law that was intended to limit the liability of corporations that make projections ("forward-looking statements") regarding future sales and earnings. The decision was a setback for WLF, which had filed a brief urging that review be granted. The 1996 law creates a "safe harbor" for forward-looking statements; provided such statements are accompanied by "meaningful" cautions, the safe harbor mandates that the statements cannot be used to hold a publicly held corporation liable to its shareholders for subsequent drops in stock prices, regardless how accurate the statements turn out to be. The appeals court interpreted the safe

harbor so narrowly that it provides virtually no protection to corporations. WLF argued that Congress intended to provide broad protection for forward-looking statements in order to encourage companies to provide such information.

Cypress Semiconductor Corp. v. Yourman. On November 5, 2001, the California Court of Appeal declined to reverse a lower-court decision that may encourage an increase in the filing of frivolous securities class actions by plaintiffs' attorneys. The decision was a setback for WLF, which had filed a brief urging reversal. WLF had argued that the plaintiff – which had been the target of a previous, nonmeritorious lawsuit alleging securities fraud – ought to be permitted to proceed with a malicious prosecution lawsuit against the law firm that filed the non-meritorious suit. WLF argued that the superior court's ruling, if upheld, would give plaintiffs' attorneys license to file frivolous securities class actions against corporations that have committed no wrongdoing.

Complaint on Dissemination of Damaging Information Against Bayer Company. On July 13, 2004, WLF filed a complaint with the Securities and Exchange Commission (SEC) requesting that it conduct a thorough investigation of the facts and circumstances regarding the lawfulness of certain communications by plaintiffs' attorneys designed to depress the stock price of Bayer AG, a German company that is traded on the New York Stock Exchange, in order to pressure the company to settle product liability lawsuits against Bayer over its cholesterol drug Baycol. A noted plaintiffs' attorney was quoted as boasting that, in order to pressure Bayer to settle his questionable lawsuit seeking \$550 million, he was disseminating negative information about Bayer to the media to engender damaging stories, which in turn would drive down the price of Bayer stock.

Complaint on Short-Selling and Class Actions. On December 19, 2003, WLF filed a complaint with the Securities and Exchange Commission (SEC), the U.S. Department of Justice (DOJ), and the U.S. Attorney's Office in San Francisco, requesting the federal agencies to investigate whether any federal civil or criminal laws were violated with respect to short selling of the stock of Terayon Communication Systems, Inc. (Terayon), and related conduct in a class action securities fraud lawsuit against the company filed by Milberg Weiss Bershad Hynes & Lerach. WLF's complaint centers around a class action lawsuit (*In re Terayon Communication Systems, Inc. Securities Litigation*) pending in federal court in San Francisco. The lead plaintiffs are short-sellers who undertook a "Game Plan" to drive down the price of the stock. At the hearing to disqualify the lead plaintiffs held on September 8, 2003, the trial judge was clearly troubled by the arrangement. "[It] disturbs me the people who are going to drive the litigation are in fact people who are betting on the stock going down." The judge was also troubled by the fact that the short seller did not disclose its short positions in the stock and the role of Milberg Weiss in the litigation.

Complaint Requesting SEC to Investigate Short-Selling in Class Action Case. On January 21, 2003, WLF filed a complaint with the SEC requesting a formal investigation into possible insider trading violations regarding the short-selling of J.C. Penney Co. stock. Based on a Wall Street Journal article, there is evidence suggesting that short-sellers received and traded on information about the timing of the filing of a major class action lawsuit against Eckerd Drug Stores, which is owned by J.C. Penney Co. WLF argues that if the plaintiffs' attorney tipped off the short-sellers as to when the suit would be filed, that could constitute unlawful insider trading. WLF supplemented the complaint with additional information on January 29, 2003.

Comments on Hedge Fund Regulation. On April 30, 2003, WLF submitted comments to the Securities and Exchange Commission for its consideration in response to SEC's request for public comment regarding the SEC's Roundtable Discussions Relating to Hedge Funds, which were held on May 14 and 15, 2003. In its comments, WLF reiterated concerns outlined in its earlier submissions to the SEC about the problem of plaintiffs' attorneys disclosing material nonpublic information to short sellers, namely, the timing of the filing of major class action lawsuits against publicly traded companies. Some hedge funds short the stock and reap profits when the filing of the suit causes a drop in the price of the stock. WLF subsequently submitted supplemental comments. In late September 2003, the SEC staff issued its report to the Commission.

Petition for Rulemaking Regarding Disclosure of Contacts Between Plaintiffs' Attorneys and Analysts. On March 24, 2003, WLF filed a formal Petition for Rulemaking with the SEC that would require plaintiffs' attorneys to give pre-notification to the SEC and the public about any contacts or communication between plaintiff's attorneys and financial analysts, short-sellers, and other persons whose recommendation or trading could affect the price of the stock of a publicly-traded company. WLF's petition was based on reports of trial attorneys who file class action cases urging analysts to downgrade the value of a stock, hoping that the targeted company will settle the lawsuit.

Congressional Testimony. On May 22, 2003, WLF testified before the House Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises (chaired by U.S. Rep. Richard Baker) of the House Financial Services Committee. WLF was asked to testify on the relationship between trial attorneys and short sellers. WLF testified about cases where plaintiffs' attorneys in class action cases may have provided short sellers with information about the timing of the filing of the lawsuits against publicly traded companies which may constitute unlawful insider trading.

J. Abuse of the Federal False Claims Act

The federal False Claims Act (FCA) prohibits anyone from submitting to the federal government a "false" claim for payment. Unfortunately, plaintiffs' lawyers have latched on to the FCA and have expanded it far beyond the anti-fraud statute intended by Congress. The FCA includes a qui tam provision that allows individuals to appoint themselves as "private attorneys general" and to sue companies - supposedly on behalf of the federal government. The result is that plaintiffs' attorneys often file FCA suits based on little more than a policy disagreement with actions taken by a private business. WLF frequently litigates in support of the targets of such suits; WLF argues that the FCA's qui tam provision should be read narrowly to prevent abusive lawsuits.

U.S. ex rel. Gilligan v. Medtronic, Inc. On April 6, 2005, the U.S. Court of Appeals for the Sixth Circuit in Cincinnati dismissed a lawsuit that sought to second-guess decisions of the Food and Drug Administration (FDA) that authorize the sale of drugs or medical devices. The decision was a victory for WLF, which filed a brief in support of the manufacturer whose product was being challenged. WLF argued that permitting such suits to go forward would undermine the integrity of FDA's product-approval system and could result in patients being denied access to life-saving medical products. Although it dismissed the lawsuit, the Sixth

Circuit did so on narrower grounds than WLF had urged. The plaintiffs were suing under the False Claims Act (FCA), a federal law that permits bounty-hunting private citizens to file a suit in the name of the federal government against anyone who makes a "false claim" to the government. They alleged that the defendant, a medical device manufacturer, induced health care providers to falsely claim that the manufacturer's products had been properly approved by FDA. The Sixth Circuit held that the information on which the plaintiffs based their lawsuit was publicly available before they filed suit. The appeals court held that under those circumstances, the FCA suit was barred by the "public disclosure" bar, which eliminates federal court jurisdiction over an FCA claim where the plaintiff is not the original source of the allegations. WLF's victory became final on January 9, 2006, when the U.S. Supreme Court denied the plaintiffs' petition for review of the Sixth Circuit's decision.

U.S. ex rel. Riley v. St. Luke's Episcopal Hospital. On May 28, 2001, the U.S. Court of Appeals for the Fifth Circuit ruled 11-2 that the qui tam provision of the False Claims Act (which allows private citizens to sue as "private attorneys general" in the name of the government) does not violate the Take Care Clause and Appointments Clause of Article II of the Constitution. The decision was a setback for WLF, which had filed a brief urging that the qui tam provision be held unconstitutional. The district court had so held, and a Fifth Circuit panel had agreed; but the full Fifth Circuit, sitting en banc, disagreed and overturned the panel's decision. WLF argued in its brief that private plaintiffs may not bring qui tam suits because they lack standing under Article III of the Constitution. WLF argued that such plaintiffs suffer no economic or other injury when a company allegedly makes a false claim to the federal government, and hence, federal courts lack jurisdiction to hear the case.

K. Opposing Excessive Asbestos Litigation

Perhaps the best example of litigation run amuck in our nation's courts is the asbestos litigation fiasco. Hundreds of thousands of personal injury suits have been filed against hundreds of companies – many with only minimal connection to asbestos-containing products – and hundreds of thousands of additional suits are expected over the next several decades. While several thousand individuals contracted deadly forms of cancer as a result of their exposure to asbestos, the vast majority of claimants have suffered no discernable injury. Yet, our nation's courts have proven incapable to date of separating the wheat from the chaff. WLF has repeatedly gone to court in an effort to place limits on the mindless award of damages to uninjured asbestos plaintiffs – damages that have driven scores of major companies into bankruptcy and have significantly undermined the claims of those who actually have suffered serious injury.

In re Congoleum Corp. On June 9, 2006, WLF filed a brief in the U.S. District Court for the District of New Jersey, urging it to uphold a \$9 million sanction imposed by a bankruptcy judge on a Washington, D.C. law firm for its unethical behavior while representing a company that filed for bankruptcy in the face of massive asbestos liability litigation. WLF argued that the law firm of Gilbert Heintz & Randolph (GHR) should be required to disgorge all legal fees it was paid during the course of bankruptcy proceedings. WLF noted that last year the U.S. Court of Appeals for the Third Circuit kicked GHR off of the case based on its unethical conduct. WLF argued that GHR had done tremendous damage to the bankruptcy system by undermining public confidence in the integrity of that system, particularly with

respect to asbestos-related bankruptcies. WLF argued that disgorgement of fees is an appropriate remedy in that it will provide at least partial compensation for the losses caused by GHR.

Owens Corning v. Credit Suisse First Boston. On March 31, 2005, the federal district judge overseeing the Owens Corning bankruptcy proceedings ruled that all pending and future asbestos claims against the company should be assigned an estimated value of \$7 billion, considerably less than the \$11 billion requested by plaintiffs' lawyers representing asbestos claimants. The decision was a modest victory for WLF, which had filed a brief urging that plaintiffs' lawyers not be permitted to make off with the lion's share of the corporation's assets by inflating the asbestos-related liability claims of their clients. The district court agreed with WLF that pre-bankruptcy asbestos awards issued by state courts are not an accurate gauge of the value of pending and future claims, because past awards were inflated by such questionable practices as: (1) venue shopping, with many plaintiffs filing suit in "friendly" jurisdictions far from their homes; (2) plaintiffs identified through x-ray screenings of large numbers of individuals exhibiting no symptoms of disease; (3) erroneous x-ray readings; (4) over-payment of "unimpaired" claimants; (5) grouping large numbers of plaintiffs in a single suit; (6) "global" settlements of large numbers of cases; and (7) multiple punitive damages awards based on the same alleged misconduct. The court cited those practices as its basis for reducing asbestos claims by nearly 40%.

Rehm v. Navistar. On January 6, 2006, WLF, along with a dozen leading industry and insurance trade organizations, urged the Kentucky Supreme Court to affirm a lower court ruling rejecting attempts to circumvent Kentucky workers' compensation program. In *Rehm v. Navistar*, the plaintiff was an employee of a company that installs industrial conveyor systems and machinery. That company was hired as a subcontractor over the years by some 15 different companies to install equipment at their facilities. The plaintiff claims he was exposed to asbestos at those premises and contracted malignant mesothelioma. Under Kentucky law, a contractor becomes a statutory employer, and thus is immune from tort liability, if the work it subcontracted is a "regular or recurrent" part of the work or trade of the contractor. In that circumstance, injured employees are compensated under the state's workers' compensation program and cannot sue the companies separately under tort liability.

Petition for Asbestos Administrative Order. On May 26, 2006, WLF joined with over a dozen leading industry and trade organizations in urging the Michigan Supreme Court to adopt either of two proposed administrative procedures to help alleviate the asbestos litigation crisis. The crisis is fueled by thousands of lawsuits filed by plaintiffs' attorneys on behalf of individuals who may have been exposed at one time to asbestos but are not sick, forcing companies into bankruptcy while leaving little or no funds to compensate those with significant illnesses. WLF's submission was a follow-up to a similar 2004 filing requesting that the Michigan Supreme Court grant a petition filed by over 60 Michigan asbestos lawsuit defendants that would allow the sickest asbestos claimants to have their cases litigated, and would place most of the other cases where claimants have no illness on an "inactive docket." Those placed on the inactive docket could later reactivate their lawsuits if they develop an asbestos-related disease.

3M Company v. Johnson. On January 20, 2005, the Mississippi Supreme Court overturned a record \$150 million asbestos product liability judgment awarded to six men, none of whom was injured. The decision was a victory for WLF, which had filed a brief arguing

that the award was a textbook example of the tort system run amok, with damages being freely awarded even in the absence of evidence of exposure to asbestos or negligence on the part of the defendants, proof that any alleged negligence caused the plaintiffs' alleged injuries, or proof that the plaintiffs suffered damages. The Supreme Court agreed with WLF that none of the plaintiffs demonstrated that he had suffered any injury resulting from his use of the defendant's products. The court was particularly critical of the trial court's decision to consolidate numerous claims against numerous defendants into a single trial; the court agreed with WLF that the consolidation deprived defendants of their rights to have defenses adjudged on an individual basis.

Crown Cork & Seal Co. v. Ieropoli. On February 19, 2004, the Pennsylvania Supreme Court voted 4-3 to strike down a Pennsylvania tort reform statute that limited the liability of certain manufacturers that have been unfairly drawn into the asbestos tort litigation morass. The court ruled that the statute violated the state constitution by seeking to change liability rules applicable to pending lawsuits. The decision was a setback for WLF, which filed a brief urging the court to uphold the statute. The statute stated that a Pennsylvania corporation that never manufactured asbestos products could not be brought into asbestos suits simply because it acquired a company that formerly manufactured asbestos products but had ceased doing so long before the acquisition took place. WLF argued that the statute is constitutional and promotes the public interest by limiting liability of such companies.

Norfolk & Western Ry. Co. v. Ayers. On March 10, 2003, the U.S. Supreme Court declined to bar "fear of cancer" emotional distress damage awards to those who have been exposed to asbestos, even in the absence of evidence that they have developed cancer. The 5-4 decision was a setback for WLF, which partnered with former Attorney General Griffin Bell to file a brief in the case. WLF argued that awards to uninjured plaintiffs are becoming all too common in asbestos litigation and are undermining the fairness of the nation's tort system. The Court held that so long as a plaintiff has suffered some physical impairment due to his asbestos exposure (in this case, a mild bronchial condition called asbestosis), he is entitled to recover for whatever emotional injuries are claimed to have been caused by the exposure. In dissent, Justice Kennedy said that the practical effect of the ruling will be to deplete funds that would otherwise be available to compensate the truly injured.

Petitions on Fraudulent Asbestos Claims. In March 2004, WLF launched a nationwide project designed to focus the attention of prosecutors and bar authorities on fraudulent evidence in asbestos cases. In petitions filed in Illinois, Mississippi, Missouri, Texas, Washington, and West Virginia, WLF charged that plaintiffs' attorneys are filing thousands of asbestos lawsuits on behalf of claimants who are neither ill nor physically impaired. WLF charged that attorneys collect plaintiffs through questionable screening programs; it requested that bar authorities investigate the manner in which those programs are conducted. WLF charged that because thousands of asbestos tort suits have been filed on behalf of healthy claimants, more than 30 major corporations have been driven into bankruptcy, yet those truly injured by exposure to asbestos cannot gain speedy access to the compensation they deserve.

L. Fairness in Government Contracting

The federal government enters into so many contracts with private companies that an entire body of law has developed to govern the rules for such contracts. WLF has participated

in government contracts litigation to ensure that the rules that develop in this area are fair both to taxpayers and to contractors.

Vietnam Assoc. for Victims of Agent Orange v. Dow Chemical Co. On February 13, 2006, WLF filed a brief in the U.S. Court of Appeals for the Second Circuit urging the court to reject a class action lawsuit brought on behalf of Vietnamese nationals, including former North Vietnamese and Viet Cong fighters, against a group of American chemical companies for their role in producing Agent Orange during the Vietnam War. The plaintiffs, the Vietnam Association for Victims of Agent Orange/Dioxin (“VAVAO”) and various Vietnamese nationals, claim that the U.S. military’s herbicide spraying program during the war was illegal under international law. In its brief, WLF focused on the applicability of the government contractor defense to international law claims, arguing that the defense applies to such claims. WLF noted that allowing tort suits against defense contractors based on alleged violations of the laws of war by U.S. forces would be inequitable and would have serious deleterious effects on military procurement.

Rumsfeld v. United Technologies Corp. On November 10, 2003, the U.S. Supreme Court issued an order declining to review this case, which involved the circumstances under which a party to a government contracts dispute may introduce expert testimony. In a brief filed in August 2003, urging that review be granted, WLF argued that expert testimony is admissible regarding what should be counted as a “cost” under the federal Cost Accounting Standards (CAS). The CAS are a set of rules that govern the accounting practices of government contractors. WLF argued that permitting the testimony of proposed experts (such as, in this case, professors of economics and accounting) would assist trial courts greatly in determining the meaning of the CAS. The U.S. Court of Appeals for the Federal Circuit nonetheless held that such expert testimony is never permissible.

General Motors v. U.S. On October 31, 2003, WLF filed a brief in the U.S. Supreme Court, urging it to review an appeals court decision that could rewrite contracts between the U.S. and its contractors – to the detriment of those contractors. The appeals court held that in many cases, a government contractor is not permitted to charge the government for pension costs directly attributable to the contract, even though federal Cost Accounting Standards appear to provide for such charges. Noting that the disputed charges amounted to more than \$200 million in this one case alone, WLF argued that the appeals court decision is wholly inconsistent with the past practice of the Defense Department. On December 1, 2003, the Supreme Court issued a decision declining to hear the case.

M. Opposing Creation of New Tort Liability Theories

Plaintiffs’ lawyers repeatedly ask courts to create new legal theories under which deep-pocketed defendants can be held liable for damages suffered by their clients. WLF repeatedly goes to court to oppose such efforts; WLF believes that the greatest shortcoming in the American legal system is that too many blameless defendants are being dragged into court to defend against extravagant liability theories, not that plaintiffs have been unable to recover damages from blameworthy defendants.

Abdullahi v. Pfizer. On May 24, 2006, WLF filed a brief in the U.S. Court of Appeals for the Second Circuit, urging it to dismiss claims that a drug company violated international law when a team of its doctors provided emergency medical aid to children in Nigeria suffering from meningitis. WLF argued that federal law does not permit private parties to file tort suits asserting that doctors violated international law by allegedly treating patients without first obtaining the patients' informed consent. WLF urged the court to reject claims that such suits are authorized by the Alien Tort Statute (ATS), a law that lay dormant for nearly 200 years before activists recently began seeking to invoke it. WLF argued that the ATS was adopted in 1789 to allow the federal courts to hear cases involving piracy and assaults on ambassadors. WLF argued that it has been transformed by activist attorneys into a tool for second-guessing American foreign policy and for attacking the overseas conduct of corporations.

Neer v. Pelino. On May 17, 2006, WLF filed a brief with the U.S. Court of Appeals for the Third Circuit in Philadelphia urging the court to affirm a lower court decision that private litigants do not have the right under Section 304 of the Sarbanes-Oxley Act (SOX) to sue officers and directors of a publicly traded company to disgorge bonuses and profits for alleged errors in the company's accounting statements filed with the Securities and Exchange Commission (SEC). Instead, WLF argued, Congress intended that only the SEC has the authority to enforce the penalty provision. WLF argued that Congress did not manifest any intent to allow private litigants to enforce the penalty provision and that to permit such suits would be contrary to sound public policy. In particular, enforcement of Section 304 would not be uniform and might force blameless officers to disgorge profits simply as a means of avoiding expensive lawsuits. In addition, plaintiffs' attorney fees would be siphoned from disgorged funds that otherwise would have been returned to the company and its shareholders had the SEC instigated the penalty proceedings.

Grisham v. Philip Morris USA, Inc. On March 9, 2006, WLF filed a brief in the California Supreme Court, urging it to uphold the dismissal of tort claims filed against cigarette companies based on allegations that the companies wrongfully addicted the plaintiffs to tobacco. WLF argued that such claims by long-time smokers are barred by the statute of limitations because the plaintiffs knew (or should have known) for decades that they were addicted to cigarettes, yet they waited until 2002 to file suit. WLF urged the court to reject the plaintiffs' contentions that their addiction to tobacco rendered them incapable of recognizing their addiction. The public has known for decades that tobacco is addictive, WLF argued; if there was any doubt on that score, it was eliminated in 1988 when the Surgeon General confirmed that tobacco is addictive. In light of that knowledge, individuals who sue based on claims that they were wrongfully addicted should not be permitted to wait for decades before filing suit, WLF argued.

Balbuena v. IDR Realty LLC. On February 21, 2006, the New York Court of Appeals declined to bar illegal aliens who are plaintiffs in personal injury lawsuits from recovering wages lost as a result of their injuries. The decision was a setback for WLF, which filed a brief in the case, urging that such damages be barred. WLF argued that awarding illegal aliens the wages they would have earned if they had not been injured would be inequitable because it would have been illegal for them to actually earn those wages by taking a job in this country. WLF argued that such awards are preempted by federal law because they undermine federal immigration policy by encouraging more illegal aliens to enter the country and to seek employment. The Court of Appeals rejected WLF's position, contending that to deny

damages for lost wages would encourage employers to reap the economic benefits of hiring illegal aliens. This personal injury tort suit was filed by Gorgonio Balbuena, an illegal alien who was severely injured while working for Taman. Balbuena alleges that his injuries were caused by Taman's negligence. Because Taman no longer exists, Balbuena filed suit against (among others) IDR Realty LLC, which owns the property where the injury occurred. Balbuena's right to recover for his injuries and medical expenses was not challenged; but WLF challenged Balbuena's claim that he is entitled to recover the wages he could have earned in this country had he not been injured.

Paramount Citrus v. Superior Court. On January 5, 2006, the California Supreme Court declined to review a trial court decision that allows illegal aliens who file tort actions to seek recovery for damages not yet incurred, and to base those damage claims on an assumption that they will remain in the United States for the remainder of their lives. The decision was a setback for WLF, which filed a brief urging the court to grant review. WLF argued that, because illegal aliens have no right to remain in this country, such damage claims should be limited to the amount of damages that would be incurred if the illegal alien returned to his native country. The case involves an illegal alien who was permanently disabled in a car accident. He seeks recovery of the cost of providing him "life care" for the next 50 years. The present value of such care is \$5.3 million if he remains in the United States, but only \$1.8 million if he returns to his native Mexico. WLF argued that because the plaintiff has no right to remain in this country, he has no right to recover damages computed based on an assumption that he will remain here. WLF also argued that granting the plaintiffs' damage claims would undermine federal immigration policy.

Philip Morris USA v. Boeken. On March 20, 2006, the U.S. Supreme Court declined to review a California court decision that imposed a massive liability award against the manufacturer of a "light" cigarette on the ground that the public believes that "light" cigarettes pose less of a health risk than they actually do. The order, issued without comment, was a setback for WLF, which filed a brief urging the Court to review the case. WLF argued that such tort claims are preempted by federal law because cigarette manufacturers already display all the health and safety warnings mandated by the federal government. WLF argued that Congress determined, when it adopted the Federal Cigarette Labeling and Advertising Act, the health warnings that manufacturers must include in advertising and on their labeling. WLF argued that states should not be permitted to second-guess that congressional determination by allowing tort suits that would require manufacturers to impose additional warning requirements. WLF argued that Congress has passed a series of laws designed to allow companies in a wide variety of industries to advertise nationwide by imposing a uniform advertising standard and barring States from adopting conflicting standards. WLF argued that the California court decision could have the effect of undermining all such laws.

Bank of China v. NBM L.L.C. On November 15, 2005, the U.S. Supreme Court dismissed this case, thereby preserving the lower court's decision in this important case arising under RICO, the federal anti-racketeering law. The dismissal was a victory for WLF, which had filed a brief urging the Court to affirm the lower court decision and thereby halt the seemingly endless expansion of civil lawsuits brought under RICO. WLF argued that plaintiffs should not be able to recover in a civil RICO action unless they can demonstrate that they "reasonably relied" on the defendant's alleged fraudulent misrepresentations. WLF argued that reliance has always been an element of common-law fraud actions and should be required in RICO actions as well. The case involved loans made by the Bank of China to various

individuals and firms involved in currency trading. The bank alleged that in order to obtain the loans, the defendants submitted false financial information. The defendants responded that the bank's employees and officers were fully aware of their precarious financial position and did not rely on any of the financial information in making the loans. Instead, they alleged, the bank made the loans because it wanted to earn the millions of dollars in fees and interest generated by the loans and was willing to assume the known risks that the loans would not be repaid if the defendants' companies failed – which they eventually did. The appeals court, whose decision stands as a result of the Supreme Court's dismissal, held that the bank could not recover under RICO without demonstrating reliance on the allegedly false financial information.

Dolan v. United States Postal Service. On February 22, 2006, the U.S. Supreme Court ruled that the United States Postal Service (USPS) is not immune from lawsuits under the Federal Tort Claims Act (FTCA) where postal employees' negligence causes physical injuries and property damage to the public. The Court agreed with WLF's argument, set forth in WLF's July 2005 brief, that Congress did not provide USPS with such special immunity and thus should be held liable just as private carriers would be held liable for similar negligent conduct. In this case, a postal carrier delivered postal matter to Mrs. Dolan's home and negligently piled the mail and magazines on the porch by the door where a person leaving the home would likely step. Mrs. Dolan slipped on the mail and was severely injured. The Court agreed with WLF that Congress only intended immunity for damage, loss, or delay of the mail itself, not for physical injuries due to negligence of postal employees.

Price v. Philip Morris, Inc. On December 15, 2005, the Illinois Supreme Court overturned a \$10.1 billion award against Philip Morris, Inc., on the ground that the conduct complained of by the plaintiffs – the labeling of some cigarette brands as “light” or “low tar” – was authorized by the Federal Trade Commission. The decision was a victory for WLF, which filed a brief in 2003 on behalf of itself and the Illinois Civil Justice League opposing the lawsuit. The trial judge had levied a \$7.1 billion award for compensatory damages against the company based on claims that the company had fraudulently implied that its low-tar cigarettes are safer than ordinary cigarettes. The trial judge also awarded \$3 billion in punitive damages. On appeal, the Illinois Supreme Court noted that Illinois law does not permit fraud claims based on conduct “specifically authorized” by federal regulators. The Court determined that the FTC had affirmatively permitted the use of the descriptions in question in two consent orders.

Brodsky v. Grinell Hauling, Inc. WLF scored a victory on August 9, 2004, when the New Jersey Supreme Court upheld an appellate court ruling that would prevent the jury from being told the particulars of New Jersey's comparative fault statute in a case where a responsible party in a tort action was bankrupt. If the jury were told of the statute, it would likely shift liability to a solvent defendant company in order to compensate the plaintiffs for their injuries. On February 19, 2004, WLF filed a brief in the Court, urging it to maintain an equitable system for allocating tort liability when several defendants are deemed liable for inflicting injury. Under current law, each defendant must pay a share of the damage award based on the jury's findings regarding each defendant's share of the blame. The plaintiffs are asking the court to change that system when one of the defendants has declared bankruptcy and thus cannot pay its share of any judgment; the plaintiffs ask that juries be instructed to allocate damages only among the solvent defendants. WLF argued that it would be extremely

unfair to require a defendant deemed only 5% responsible for the plaintiff's injury to bear 100% of the damages simply because other defendants are bankrupt.

Doe v. Unocal Corp. On April 22, 2003, WLF filed a brief in the U.S. Court of Appeals for the Ninth Circuit, urging the court to rein in suits being filed under the Alien Tort Statute (ATS) – which is being used increasingly by activists to challenge the overseas conduct of U.S. corporations. The ATS – a 1789 law that was intended merely to provide federal court jurisdiction in a limited number of cases involving mistreatment of ambassadors and piracy on the high seas – was held by a Ninth Circuit panel to allow a suit against Unocal Corporation based on Unocal's alleged mistreatment of Myanmar citizens during construction of a pipeline in Myanmar. In urging the entire Ninth Circuit to overturn that Ninth Circuit panel decision, WLF argued that the ATS does not (as the panel held) make alleged violations of international law actionable in federal court. WLF argued that only the Constitution or laws adopted by Congress – not international law – are enforceable in federal court. The parties settled the case in December 2004.

Korea Supply Co. v. Lockheed Martin Corp. On March 3, 2003, the California Supreme Court issued a ruling that significantly reins in abusive lawsuits being filed in California by plaintiffs' lawyers under that State's Unfair Competition Law (UCL). The decision was a victory for WLF, which filed a brief in the case. The court agreed with WLF that the California legislature adopted the UCL as a means of ensuring that victims of unfair or fraudulent business practices can recover their out-of-pocket losses, not as a means of permitting plaintiffs' lawyers to extort large settlements from legitimate businesses in cases where the plaintiff has suffered no real loss. In particular, the court agreed with WLF that a plaintiff that suffered no losses should not be permitted to recover profits the defendant earned as a result of its allegedly unfair trade practices.

Anschutz v. Superior Court. On November 19, 2003, the Supreme Court of California denied a petition to review a lower court decision that permits out-of-state individuals and businesses to be sued in California based solely on the California activities of corporations in which they are shareholders. The decision was a setback for WLF, which in October filed a brief urging the court to grant review. WLF argued that no one should be subject to suit in a state with which he lacks minimum contacts, and that ownership of shares in a company is insufficient to establish such contacts.

Mt. Olivet Tabernacle Church v. Emerson Electric Co. On November 13, 2002, the Pennsylvania Supreme Court upheld a large tort judgment in a case in which the plaintiff destroyed key evidence that prevented the defendant from mounting an effective defense. The decision was a setback for WLF, which filed a brief urging that the judgment be overturned as a sanction for the plaintiff's misconduct. WLF argued that sanctions should be imposed on a party to litigation whenever he is responsible for the destruction of relevant evidence and the opposing party is prejudiced thereby. The case arose in the aftermath of a fire that destroyed a church; the plaintiff alleged that the fire was caused by a defective water heater manufactured by the defendant, but the plaintiff destroyed the fire scene before the manufacturer had an opportunity to inspect it.

EEOC v. United Parcel Service, Inc. On September 20, 2002, WLF scored a victory when the U.S. Court of Appeals for the Ninth Circuit ruled that a package delivery company did not violate the Americans with Disabilities Act (ADA) when it required that its truck

drivers meet certain visual acuity standards for safety purposes. The company's standards excluded only those job applicants with severe sight loss (worse than 20/200 vision) in at least one eye. WLF argued in its brief, and the Court agreed, that those who can see well out of one eye generally do not qualify as "disabled" under the ADA and thus may not invoke the law's protections. WLF also argued that there are valid safety reasons for a company not to hire drivers who can only see out of one eye.

Comments on Uniform Commercial Code Revisions. On May 9, 2003, concerned by proposed revisions to Articles 1 and 2 of the Uniform Commercial Code, WLF submitted comments to the National Conference of Commissioners on Uniform State Laws and the American Law Institute. WLF argued against adoption of the proposed changes. WLF argued that the revised Articles 1 and 2 – if adopted by the NCCUSL and ALI and enacted by state legislatures – would create uncertainty in business transactions. The revisions would also introduce new forms of tort-like liability that are properly within the province of tort law.

N. Opposing Criminalization of Business Practices

There has been a disturbing trend over the last decade by government regulatory agencies and federal prosecutors to criminalize normal business activities. Even unintentional and minor infractions of any of the thousands of regulations facing the business community are treated as major felonies, when it often would be far more rational to address them administratively. It appears that government regulators and prosecutors think that the free enterprise system is the enemy, and that honest businessmen should be targeted. WLF is at the forefront in the courts opposing this unfair and excessive criminalization of business activities.

Arthur Anderson LLP v. United States. On May 31, 2005, a unanimous Supreme Court reversed the criminal conviction of Arthur Andersen for witness tampering, ruling that the jury instructions did not require a showing of criminal intent. WLF had filed a brief in the Court in February 2005 urging it to reverse a court of appeals decision that would criminalize legitimate business housekeeping activities without prosecutors having to show any criminal intent. In *Arthur Andersen LLP v. United States*, the U.S. Court of Appeals for the Fifth Circuit upheld the high profile criminal conviction of the accounting firm for willful obstruction of justice. Andersen supervisors had simply reminded company employees to follow the company's legitimate document retention policy *prior* to the initiation of an investigation of Andersen by the Securities and Exchange Commission (SEC) into the Enron matter. In a brief filed on behalf of itself and the U.S. Chamber of Commerce, WLF argued that the lower court's broad reading of the obstruction of justice statute is not only inconsistent with the rulings of other circuit courts, but also could subject thousands of businesses to criminal prosecution for failing to retain documents that may be subject to future government agency investigations. WLF had also filed a brief in the Court in 2004 successfully urging it to review the case.

United States v. Fanfan; United States v. Booker. On January 12, 2005, the U.S. Supreme Court ruled that the federal Sentencing Guidelines violate a person's Sixth Amendment right to a jury trial when judges impose a sentence under those guidelines based on aggravating factors not found by a jury beyond a reasonable doubt. But the Court remedied this violation by striking down the provision of the Sentencing Reform Act of 1984 that made

CONFIDENTIAL

the guideline sentences mandatory for federal judges. The guidelines are now only advisory; that is, although judges should consider them in deciding what sentence to impose in a particular case, they are not strictly bound by them. This decision will greatly diminish the power of overzealous prosecutors who effectively controlled what prison sentences would be meted out, and restore sentencing discretion to experienced and impartial judges. The Court also struck down the so-called "Feeney Amendment" regarding appellate review, thereby giving more discretion to the sentencing judge.

Thurston v. United States. On March 20, 2006, WLF filed a brief in the U.S. Court of Appeals for the First Circuit in Boston urging the court to uphold the district court's three-month sentence imposed on a business executive for relatively minor misconduct – the same sentence a different district judge had imposed in an earlier sentencing proceeding under the then-mandatory Sentencing Guidelines. The Justice Department is appealing from the sentence, and is asking the appeals court instead to direct that a five-year sentence be imposed. WLF's brief argued that William Thurston deserves no more than three months in federal prison, particularly given the Justice Department's agreement to a plea bargain that allowed a more culpable co-defendant to avoid serving any jail time. WLF argued that the Justice Department, by insisting that the district judge should have followed Sentencing Guidelines provisions that would have resulted in a longer sentence, is in effect arguing that the voluntary Sentencing Guidelines should be deemed mandatory – despite a ruling last year by the U.S. Supreme Court that the Guidelines are unconstitutional and thus are no longer mandatory. In an earlier victory for WLF, the U.S. Supreme Court in 2005 overturned a prior First Circuit decision that had directed the district court to impose a lengthy prison sentence on Thurston. WLF has focused attention on the Thurston case for the past two years as an example of inappropriate federal government efforts to overcriminalize business activities.

Opposing Proposed Regulations Requiring Preservation of Physical Evidence. On March 6, 2006, WLF submitted formal comments to the Chemical Safety and Hazard Investigation Board opposing proposed regulations that would require owners and operators of chemical and other companies to preserve certain physical evidence, including computer records and other information, following an accidental release of a toxic chemical or other hazardous substance into the ambient air. In addition, the proposed rule would trigger civil or criminal referral by the CSB if there is a "knowing failure to comply" with the proposed regulations. WLF argued that the CSB does not have the statutory authority to promulgate the proposed preservation of evidence rule, that the Board had failed to demonstrate that there was any need for the rule, and that the rule would allow the Board to make criminal referrals even if there was no criminal intent on the part of the company or its employees for not complying with the rule.

Attorney-Client Privilege. On March 29, 2006, WLF filed comments with the U.S. Sentencing Commission along with a coalition of business groups, urging the Commission to remove certain language from amendments of the Sentencing Guidelines that, if left intact, would harm the attorney-client privilege. Lawyers for companies and other organizations play a key role in helping these entities and their officials comply with the law and act in the entities' best interests. To fulfill this role, lawyers must enjoy the trust and confidence of managers and boards and must be provided with all relevant information necessary to properly represent the entity. By requiring routine waiver of the attorney-client and work product privileges, the amendment will discourage companies and other organizations from consulting with their lawyers, thereby impeding the lawyers' ability to effectively counsel compliance

with the law, WLF argued. In 2005, WLF urged the Commission to place this issue as a top priority on its agenda for the next round of amendments to the Sentencing Guidelines.

Comments on Corporate Compliance Programs Advisory Committee. On May 19, 2002, WLF filed comments with the U.S. Sentencing Commission's Advisory Group on Organizational Guidelines, urging it to open its meetings and to provide the public with an opportunity to submit further comments and testimony on specific issues that the Advisory Group will decide to study. In addition, WLF urged the Advisory Group to conduct thorough empirical research on the effectiveness of the criteria the Commission developed for corporate compliance programs, an issue on which the Advisory Group intends to focus its attention. The corporate compliance programs determine the level of fines that a court may impose on a convicted business entity. In general, a more detailed and comprehensive compliance program should result in reduced fine levels for that company, should it be prosecuted and convicted. On March 15, 2004, WLF filed further comments with the Commission opposing the Commission's proposed amendments to the Sentencing Guidelines that would unduly expand the definition of an "effective compliance program" for corporations in order for the company to be eligible for reduced criminal penalties. Under the current guidelines, a company will be deemed to have an effective compliance program if it is designed to reasonably detect and prevent criminal conduct within the company. Under the proposed amendment, however, an effective compliance program must be designed to ferret out and prevent violations of *any* law or regulation, whether civil or criminal, and whether federal, state, or local. In May 2004, the Commission adopted WLF's suggestion by deleting the reference to non-criminal laws, but added that the compliance program must include an ethical component that requires employees to comply with vague and undefined ethical standards.

Comments on Decriminalization of Regulatory Offenses. On June 6, 2003, WLF sent a critique and proposal to U.S. Attorney Timothy Burgess who heads the Justice Department's Attorney Advisory Group on prosecutorial policies with respect to bringing criminal actions for environmental infractions. This request relates to WLF's proposal in 2001 that DOJ update a 1983 study and report by DOJ's Office of Legal Policy, *Decriminalization of Regulatory Violations*, as a basis for a long overdue reform of our criminal justice system with respect to the criminal prosecution of regulatory offenses. WLF believes that such an effort by DOJ will help to restore the regulated community's and the public's respect for the law and law enforcement, and thus promote the public interest and sound public policy. Our current regulatory system is unquestionably an extensive morass of complicated, confusing, and burdensome statutes, rules, and regulations. This situation is further exacerbated by the fact that many of these laws, rules, and regulations provide for the imposition of criminal penalties upon companies, their officers, and employees for violating them and, in some cases, even if they did so unintentionally.

Comments on Principles of Federal Prosecution. Pending before DOJ is WLF's 2001 request filed on behalf of itself and Business Civil Liberties, Inc., that the U.S. Department of Justice (DOJ) update and publicly recommit itself to adhering to the *Principles of Federal Prosecution*, especially in white collar crime cases. The *Principles* contains guidelines meant to channel and limit the powerful force of federal prosecution. Perhaps most importantly, it suggests that federal prosecution is *not* warranted when (1) no substantial federal interest would be served by prosecution and/or (2) there is an adequate non-criminal alternative to prosecution. WLF argued that the DOJ should recommit itself to these guidelines and eschew prosecution for minor regulatory offenses when administrative or civil remedies would be

more appropriate. By doing so, WLF pointed out, the Department would encourage voluntary compliance with the law.

II. CIVIC COMMUNICATION

WLF recognizes that its litigation and regulatory activities cannot alone suffice if it is to have a significant impact in opposing the efforts of plaintiffs' lawyers and educating the public and policy makers on the damage wrought by excessive litigation. WLF has also sought to influence public debate and provide information through its Civic Communications Program. Through this program, WLF hosts well-attended media briefings featuring experts on a wide range of legal reform-related topics, publishes advocacy advertisements in national journals and newspapers, and participates in legal reform-related symposia. WLF supplements these efforts by making its attorneys available on a regular basis to members of the news media – from reporters with general-circulation newspapers to writers at influential trade and legal journals.

A. Media Briefings

The centerpiece of WLF's Civic Communications Program is its media briefings, which bring news reporters from the print and electronic media together with leading experts on a wide variety of legal topics. WLF sponsors more than a dozen such breakfast briefings each year, often focusing on health-related topics. Recent media briefings (dubbed media "noshes") on legal reform-related issues have included the following:

FDA's Federal Preemption Policy: Implications for Drug Labeling and Product Liability Litigation, March 8, 2006

- Daniel E. Troy, Sidley Austin LLP
- Mark S. Brown, King & Spalding LLP

Medical Malpractice Reform: Advances, Stalemates & Prospects for 2006, October 27, 2005

- Richard E. Anderson, M.D., F.A.C.P., The Doctors Company
- Sherman Joyce, American Tort Reform Association
- E. Neil Trautwein, National Association of Manufacturers

On the '05 Agenda: State and Federal Priorities for Reforming the Legal System, January 13, 2005

- Patrick M. Hanlon, Goodwin Proctor
- Victor E. Schwartz, Shook, Hardy & Bacon L.L.P.
- James M. Wootton, Mayer, Brown, Rowe & Maw LLP

Copyright Laws & Lawsuits: Seeking a Balance Between Public Domain and Digital Commerce, May 19, 2004

- Stewart A. Baker, Steptoe & Johnson LLP
- Jonathan Potter, Digital Media Association
- Professor Peter A. Jaszi, Washington College of Law
- William F. Adkinson, Progress & Freedom Foundation

Alcohol Use and Promotion: The Next Target for "Regulation by Litigation?", March 24, 2004

- John A. Calfee, American Enterprise Institute
- Jonathan Turley, George Washington University
- John J. Walsh, Carter, Ledyard & Milburn LLP

Do New Legal and Regulatory Challenges Threaten Advances in Agricultural Biotech?, March 17, 2004

- Stanley H. Abramson, Arent Fox PLLC
- Thomas P. Redick, Gallop, Johnson & Neuman, American Soybean Association
- Mark Mansour, Morgan Lewis LLP

Civil Justice Reform 2003: Advances, Stalemates, and Prospects for the New Year, December 11, 2003

- The Honorable Dick Thornburgh, Kirkpatrick & Lockhart (Moderator)
- Sherman Joyce, American Tort Reform Association
- Patrick M. Hanlon, Shea & Gardner
- Steven B. Hantler, DaimlerChrysler

Class Action and Asbestos: Is Federal Reform on the Horizon?, August 20, 2003

- John Beisner, O'Melveny & Myers
- Patrick M. Hanlon, Shea & Gardner

State Farm v. Campbell: Punitive Damages Return to the U.S. Supreme Court, December 6, 2002

- Stuart Taylor, Jr., National Journal (moderator)
- Philip K. Howard, Covington & Burling
- Victor E. Schwartz, Shook, Hardy & Bacon L.L.P.
- Evan M. Tager, Mayer, Brown, Rowe & Maw LLP

Can Judges and State Policymakers Rein in Runaway Asbestos Litigation?, July 30, 2002

- Richard O. Faulk, Gardere Wynne Sewell LLP
- Professor David E. Bernstein, George Mason University School of Law
- Roy Goldberg, Schnader-Harrison Segal & Lewis

Torts & Civil Justice Reform: Legal and Public Policy Developments to Expect in 2002, January 29, 2002

- Kathleen L. Blaner, Esq.
- Jonathan R. Yarowsky, Patton Boggs LLP
- Mark A. Behrens, Shook, Hardy & Bacon
- Robert S. Peck, Association of Trial Lawyers of America

Contingency Fees: Can Federal Oversight Protect Legal Consumers from Abuse?, September 5, 2001

- The Honorable Dick Thornburgh, Kirkpatrick & Lockhart, LLP (moderator)
- Victor E. Schwartz, Shook, Hardy & Bacon
- Professor Michael I. Krauss, George Mason University Law School
- Richard A. Samp, Washington Legal Foundation

Tort Reform 2001: New Opportunities and Ongoing Challenges, January 30, 2001

- Mark A. Behrens, Shook, Hardy & Bacon
- Robert A. McConnell, Hawthorne & York Intl.
- Barry J. Nace, Paulson & Nace
- Robert Peck, Association of Trial Lawyers of America

B. Web Seminars

WLF Web Seminars, introduced in 2005, present viewers with live webcast analysis and commentary by noted legal experts on current developments in law and public policy. These hour-long presentations are also conveniently archived and available on WLF's web site. The speakers for the programs, who provide their insights on a *pro bono* basis, are leading experts in the field of law to be discussed.

Ten Years after *BMW v. Gore*: Punitive Damages at Trial and on Appeal, April 25, 2006

- Andrew L. Frey, Mayer, Brown, Rowe & Maw LLP
- Evan M. Tager, Mayer, Brown, Rowe & Maw LLP

Achieving Civil Justice Reform in Court: How Defendants Can Dismantle Arbitrary, Pro-Plaintiff Common Law Rules, April 13, 2006

- Victor E. Schwartz, Shook, Hardy & Bacon L.L.P.

The Class Action Fairness Act, One Year Later: Mission Accomplished?, March 21, 2006

- John Beisner, O'Melveny & Myers LLP
- Jessica Davidson Miller, O'Melveny & Myers LLP

Trial Lawyers' "Enron": Will Indictments & Investigations Expose Bill Lerach and Milberg Weiss to Shareholder Lawsuits?, August 25, 2005

- Paul D. Kamenar, Washington Legal Foundation

The Next Wave of State Tort Litigation?: Liability Risks under Consumer Protection Laws and Public Nuisance Theories, July 27, 2005

- J. Russell Jackson, Skadden, Arps, Slate, Meagher & Flom LLP
- Victor E. Schwartz, Shook, Hardy & Bacon L.L.P.

Expanding Duties & Liability: Corporate Directors in the Post-Enron Legal Environment, June 8, 2005

- Richard A. Spehr, Mayer, Brown, Rowe & Maw LLP
- Steven Wolowitz, Mayer, Brown, Rowe & Maw LLP

The Class Action Fairness Act of 2005: Lessons, Opportunities and Challenges, March 10, 2005

- Walter Dellinger, O'Melveny & Myers LLP
- Jessica Davidson Miller, O'Melveny & Myers LLP

C. Advocacy Ads

In 1998, Washington Legal Foundation began running a series of opinion editorials on the op-ed page of the national edition of *The New York Times* called "In All Fairness." The op-ed has appeared over 100 times, reaching over five million readers in 70 major markets and 90 percent of major newspaper editors. Litigation, the role of plaintiffs' lawyers, and legal reform have been the focus of a number of recent "In All Fairness" columns:

Amnesty for Honest Businessmen, May 22, 2006

(Government should ease up on its relentless obsession to criminalize America's free enterprise system)

Cartoons Spark Outrage, February 27, 2006

(Anti-business groups threaten frivolous lawsuits against companies for marketing beverages and cereals to children by using cartoon characters)

The State of Our Union, January 23, 2006

(Activists misuse the courts to promote their agenda by obstructing homeland security measures and using junk science in novel product liability lawsuits)

WARNING: Beware of activists, plaintiffs' lawyers, and State AGs who use children and public health to attack free enterprise, November 21, 2005

(Activists harm consumers and violate the First Amendment by attacking commercial advertising)

Hurricane Looters in Pinstripes, September 26, 2005

(Trial lawyers seek to exploit tragedy of Hurricane Katrina by suing doctors, nurses, and hospitals who worked heroically to save lives)

Political Lawsuit Abuse, July 25, 2005

(Justice Department lawsuit against tobacco industry, repetitive of earlier litigation, is professionally unsound and an abuse of power)

Criminalizing Success, June 20, 2005

(Prosecution and eventual acquittal of Arthur Andersen accounting firm shows dangers of letting prosecutors' ambitions drive over-criminalization of business conduct)

What's Up With The SEC?, March 28, 2005

SEC should take prompt action on WLF complaints calling for investigation of possible collusion between plaintiffs' lawyers and short sellers)

Merchants of Fear, January 24, 2005

(Anti-business ideologues are trying to advance their ends and fill their coffers by promoting the unattainable notion of a risk-free world)

Disenfranchised by Lawyers, November 22, 2004

(Trial lawyers and overzealous state attorneys general impose ideological agenda by litigation rather than by democratic legislation)

Government's Lawsuit Addiction, September 27, 2004

(Department of Justice's lawsuit against tobacco companies is misguided and a waste of valuable resources)

The Judges of Madison County, April 21, 2003

(Courts in Madison County, Illinois epitomize America's dysfunctional tort system by sanctioning novel lawsuits and billion dollar awards)

An Idiot's Guide to Class Actions, March 10, 2003

(Plaintiff's lawyers who file securities class action lawsuits use questionable tactics to drive down stock prices of targeted companies, force settlements, and reap windfall attorney's fees)

Overlooking Stock Manipulation, November 18, 2002

(Plaintiff's class action attorneys improperly urge stock analysts to downgrade a targeted company's rating and stock price to force settlements of lawsuits)

The Future of Tort Reform?, October 21, 2002

(Because tort reform has been stalled in Congress, the courts should rein in abusive lawsuits by plaintiffs' lawyers)

Litigation, Inc., August 26, 2002

(Plaintiffs' lawyers who file abusive lawsuits to enrich themselves by charging excessive fees should be regulated to protect clients and the public)

Plundering Free Enterprise, February 15, 2002

(Plaintiffs' lawyers file abusive product liability lawsuits against asbestos manufacturers and other companies, force them into bankruptcy, and reap huge fees for themselves)

Who Should Pay for Our Legal System?, April 23, 2001

(Plaintiffs' lawyers too often get rich while delivering little or no benefit to their clients; to ensure that the public receives at least some benefit from such abuses, lawyers who receive more than \$500,000 in legal fees from a single case should be charged an excise tax of 15%)

The New Policymakers, February 5, 2001

(Professional activist groups and trial lawyers are busy gearing up to keep their outdated and unpopular ideological agenda alive; our elected representatives should head off their strategy of flooding courts with legislation dressed up as litigation)

These and other "In All Fairness" columns are available on WLF's comprehensive web site, www.wlf.org.

D. Public Appearances

WLF attorneys have appeared as featured panelists and speakers on legal reform issues before such organizations as the Food and Drug Administration, the Federal Trade

Commission, the American Medical Association, the Regulatory Affairs Professional Society, the Federalist Society, the Heritage Foundation, the American Bar Association, the National Association of Mutual Insurance Companies, the Community Financial Services Association, the American Crop Protection Association, the Forest Landowners Association, the Oklahoma Chamber of Commerce, and MedicalAlley. What follows are highlights of the numerous public appearances that WLF attorneys have made in recent years to discuss legal reform issues:

June 8, 2006, Paul Kamenar, WLF's Senior Executive Counsel, was a featured speaker at the inaugural summer speakers program of Rutgers College in Washington for both alumni and undergraduate summer interns. Kamenar discussed WLF's litigation practice and was joined by Tony Mauro, Supreme Court reporter for Legal Times.

June 6, 2006, WLF Chief Counsel Richard Samp was a featured speaker on a teleconference sponsored by Mealey's, regarding FDA's recently announced policy regarding federal preemption of state-law failure-to-warn tort suits against pharmaceutical manufacturers and health practitioners.

April 4, 2006, Samp was interviewed on WBGO-Radio in Newark, New Jersey regarding a recent court decision that held that illegal immigrants who are injured on the job are entitled to recover damages for lost wages - even though they would have had no right to continue to work in this country if they had not been injured.

March 30, 2006, Samp was a featured panelist at the Medical Device Regulatory and Compliance Congress held at Harvard University. Samp discussed manufacturers' First Amendment rights to speak truthfully about FDA-approved medical products.

February 28, 2006, Kamenar appeared on Court TV to discuss the legal issues involved in the Supreme Court case *Marshall v. Marshall*, regarding federal jurisdiction over probate and other state law claims.

December 14, 2005, Samp was the keynote speaker at a breakfast symposium in Minneapolis sponsored by MedicalAlley and MNBIO. Samp's speech focused on recent federal government enforcement actions under the False Claims Act and the anti-kickback statute.

December 6, 2005, Samp was a featured panelist at the Food and Drug Law Institute's Fourth Annual Enforcement and Litigation Conference in Washington, D.C. Samp spoke on the federal government's efforts to obtain restitution/d disgorgement as a remedy for violations of the Federal Food, Drug, and Cosmetic Act.

November 15, 2005, Samp testified before the House Judiciary Committee's Subcommittee on Courts, urging Congress to take steps to protect the rights of out-of-state defendants to move their cases from State courts to federal courts.

November 2, 2005, Samp testified before an FDA panel in support of expanding the rights of pharmaceutical companies to engage in direct-to-consumer advertising.

October 21, 2005, Samp broadcast an opinion piece on National Public Radio's "Justice Talking" program, decrying tort suits filed against health care providers who worked heroically to assist Hurricane Katrina victims but whose efforts are now being second-guessed.

CONFIDENTIAL

July 18, 2005, Samp was interviewed on KNX-Radio in Los Angeles regarding the Bush Administration's petition for Supreme Court review in *United States v. Philip Morris*, in which the Administration is seeking to invoke a federal anti-racketeering law (thus far unsuccessfully) to force the cigarette industry to pay hundreds of billions of dollars to the government.

June 28, 2005, Glenn Lammi, WLF Chief Counsel, Legal Studies Division, was interviewed for the Mike Norman Show on BizRadio 1320, KXYZ in Houston, on business criminalization issues.

June 10, 2005, Kamenar was interviewed by KHAL Radio in San Antonio, Texas discussing the Supreme Court's denial of review of *GDF Realty v. Norton*, dealing with whether the federal government has authority to regulate cave bugs found only in a small area in Texas.

May 31, 2005, Kamenar was interviewed on the NBC Nightly News discussing the *Arthur Andersen v. U.S.* case, in which the U.S. Supreme Court overturned the criminal conviction of the accounting firm for destroying documents that were sought by the government shortly before Enron had collapsed.

May 31, 2005, Samp was interviewed on CNN regarding the U.S. Supreme Court's decision in *Arthur Anderson v. U.S.*

May 11, 2005, Samp was a featured speaker at a seminar in New York City sponsored by Harvard Business School Publishing. Samp spoke on the corporate community's First Amendment rights to speak out on issues of public importance.

January 27, 2005, Samp was a featured speaker at a conference organized by the Food & Drug Law Institute in Washington, D.C. entitled, "Product Liability for FDA Regulated Products: In What Kind of World Are We Living?" Samp addressed tort liability faced by drug manufacturers for speaking truthfully about their products.

October 29, 2004, Kamenar was a featured panelist at American University Law School Symposium on Overcriminalization along with noted practitioners and law professors. The event was co-sponsored by the Heritage Foundation and the National Association of Criminal Defense Lawyers. Kamenar discussed WLF's recent litigation in this area of the law.

September 20, 2004 Samp was interviewed on KNX-Radio (the CBS affiliate in Los Angeles) regarding the federal government's racketeering lawsuit against the tobacco industry.

September 13, 2004, Kamenar was a featured panelist at a workshop sponsored by the Federal Trade Commission in Washington, D.C., on the topic of class actions and consumer protection. Other panelists included noted federal judges, law professors, and attorneys from the defense and plaintiffs' bar.

June 10, 2004, WLF Senior Vice President for Legal Affairs David Price was a panelist at a forum sponsored by the Cato Institute, together with volunteers from WLF's client, the Abigail Alliance for Better Access to Developmental Drugs. Price discussed WLF's lawsuit on behalf of itself and the Abigail Alliance against the FDA; the suit seeks earlier availability of investigational drugs for the terminally ill.

May 26, 2004, WLF Chairman and General Counsel Daniel Popeo addressed the Washington University's Widenbaum Center Breakfast Meeting in St. Louis. Popeo's speech, "Is Litigation Good for America?," was presented before business leaders, media, professors, and students.

March 31, 2004, Samp was a panelist at a forum sponsored by the Environmental Law Institute in Washington, D.C. Samp addressed the government's obligation to reimburse property owners when it seizes their property in pursuit of environmental goals.

March 3, 2004, Kamenar was the moderator at a seminar co-hosted by WLF, Kirkpatrick & Lockhart, and the Bureau of National Affairs (BNA) on legal and business issues involving Homeland Security. Other speakers included Joseph Whitley, General Counsel of the Department of Homeland Security, and U.S. Senator Pat Roberts, Chairman of the Senate Select Committee on Intelligence.

February 26, 2004, Kamenar was a featured speaker at a conference on lawsuit reform in Oklahoma City. The conference was sponsored by The State Chamber, Oklahoma's Association of Business and Industry, the Manhattan Institute for Policy Research, Oklahomans for Lawsuit Reform, and Pre-Paid Legal Services, Inc. Kamenar discussed WLF's INVESTOR PROTECTION PROGRAM before 600 business leaders.

January 23, 2004, Samp was a featured speaker at the annual meeting in Atlanta of NAAMECC (a trade group for companies that produce continuing medical education symposia), warning against government restrictions on the First Amendment right to speak truthfully regarding medical issues.

November 20, 2003, Samp addressed the American Bar Association's annual pharmaceutical conference in Philadelphia, arguing that expanded use of the False Claims Act as a vehicle for suing drug companies is jeopardizing free speech rights and the ability of drug companies to continue to develop new, life-saving therapies.

September 24, 2003, Popeo was the moderator of the panel, "The Future of Insurance Regulation," at the National Association of Mutual Insurance Companies (NAMIC) annual meeting in New Orleans.

May 13, 2003, Popeo was the keynote speaker at the Ventura County Medical Society's membership meeting in Oxnard, California. Popeo's speech was titled, "What You Can Do About Lawyers: The Future of Tort Reform and the Role that Doctors Must Play."

April 23 and again June 26, 2003, Samp appeared on CNBC to discuss *Nike v. Kasky*, the Supreme Court case that addressed the First Amendment right of corporations to freely discuss matters of public interest.

April 2, 2003, Samp was interviewed on the Pacifica Radio Network regarding the U.S. Supreme Court's decision in *Brown v. Legal Foundation of Washington*, WLF's challenge to the constitutionality of IOLTA (Interest on Lawyer Trust Account) programs. Samp was interviewed on KING-TV in Seattle on January 15, 2003 on the same topic.

CONFIDENTIAL

October 25, 2002, Samp was a featured panelist at a symposium organized by the Federalist Society, entitled, "FDA and the First Amendment."

October 11, 2002, Kamenar was a featured panelist at the Annual Conference of the Society of Environmental Journalists in Baltimore. Kamenar discussed key environmental issues, including Environmental Justice.

October 2, 2002, Popeo was the featured speaker at the Community Financial Services Association's Banking Committee meeting in Washington, D.C.

September 10, 2002, Samp testified before the Federal Trade Commission in connection with the FTC's hearings on "Health Care and Competition."

July 30, 2002, Samp was interviewed on New York radio's "The Barry Farber Show" on the Enron scandal and the need to avoid responding to the scandal by imposing excessive regulations on the business community.

May 28, 2002, Kamenar appeared on MSNBC's "Capital Report" to debate William Schultz, former Clinton FDA official, over FDA's proposal to consider First Amendment implications of FDA regulation.

May 22, 2002, Popeo was the featured speaker at the Annual Meeting of the Medical Device Manufacturers Association (MDMA). At the MDMA Chairman's Luncheon, Popeo discussed the crucial work of WLF in promoting open markets, free enterprise, and competition, and WLF's legal activities challenging excessive regulation by FDA.

March 16, 2002, Kamenar was a featured speaker at the ABA's 31th Annual Conference on Environmental Law in Keystone, Colorado. Kamenar discussed WLF's extensive efforts to prevent unwarranted use of criminal prosecutions by environmental enforcement officials.

February 16, 2002, Samp was a panelist at the University of Virginia Law School's Conference on Public Service and the Law, discussing the so-called Environmental Justice movement.

January 19, 2002, Kamenar was a featured speaker at a Rutgers University conference sponsored by the Society of Environmental Journalists. Kamenar addressed leading court cases raising key environmental issues.

January 11, 2002, Samp testified before the U.S. Commission on Civil Rights in opposition to the Environmental Justice movement's efforts to block industrial development in racial minority communities.

January 7, 2002, Samp addressed a meeting of the Federal Circuit Bar Association regarding an important property rights case in the Supreme Court, *Tahoe Sierra v. Tahoe Regional Planning Association*.

October 29, 2001, Samp spoke before a group of University of Virginia law students in Charlottesville, Virginia regarding limitations on government regulation imposed by the Takings Clause of the Fifth Amendment.

October 10, 2001, Samp appeared on a program sponsored by Maine Public Radio regarding the propriety of States' efforts to impose price controls on prescription drugs.

June 28, 2001, Samp was interviewed on Hearst Television regarding *Lorillard v. Reilly*, a Supreme Court decision that broadly affirmed commercial speech rights. Samp was interviewed on the same subject on KUOW-Radio in Seattle (June 29), C-SPAN (April 24), and AP Radio (April 25).

June 7, 2001, Lammi addressed over 200 corporate counsels and public affairs specialists on public interest legal groups' approach to litigation communications at a Bork & Associates and Fulcrum Information Services conference, "Winning the Reputation War in High Profile Litigation."

February 12, 2001, Popeo was a featured speaker before the Republican State Attorneys General Association's 2001 Winter Conference in Palm Beach, Florida. Popeo spoke on "Managing Public Relations and the Bottom Line."

January 10, 2001, Popeo was the dinner speaker for the St. Louis, Missouri Discussion Club. His topic was "Free Enterprise Public Interest Law and the Role of Communications."

III. PUBLICATIONS

WLF's Legal Studies Division is the preeminent publisher of analytical and carefully-researched, yet readable, legal policy papers. WLF publishes in seven different formats, which range in length from concise LEGAL BACKGROUNDS covering current developments affecting the American legal system, to comprehensive Monographs providing law-review-length inquiries into significant legal issues.

Since its inception 17 years ago, WLF's Legal Studies Division has produced a library of publications on legal reform of considerable size and depth. The areas on which these papers have focused range from substantive explanations of federal and state legislative reform efforts to essential analyses of the most important tort-related court rulings of the day to in-depth assessments of specific categories of civil justice law, such as scientific evidence, product liability, the discovery process, punitive damages, and the class action mechanism. Authoring these papers pro bono for WLF are America's leading legal reform and civil justice experts from business, government, the courts, private law firms, and academia. Notable authors include: former U.S. Attorneys General **Dick Thornburgh** and **John Ashcroft**; **Senator Orrin Hatch**; U.S. Court of Appeals Judges **Harold DeMoss** and **Edith Jones**; U.S. District Court Judge **Shira Scheindlin**; Yale Law Professor **George Priest**; longtime tort reform advocate **Victor Schwartz**; former Attorney General of Alabama **Bill Pryor**; and former Solicitor General of the United States **Theodore Olson**.

WLF legal reform publications have been cited in court rulings, law review articles, legal briefs, and congressional debates; have provided intellectual firepower to those who are fighting for legislative reform at the federal and state levels; are relied upon by legal and civil justice issue reporters; and are frequently reprinted in influential trade journals and newsletters. Publications during the past five years include:

CONFIDENTIAL

Medical Monitoring Claim Pursued In New York State

By **Sean Wajert**, a partner at Dechert LLP.

LEGAL OPINION LETTER, June 2, 2006, 2 pages

Bilked Asbestos Plaintiffs Sue Florida Bar Association

By **John Stadler**, Counsel in the Boston office of the Law Firm Nixon Peabody LLP.

COUNSEL'S ADVISORY, May 19, 2006, 1 page

USG Settlement Reflects Sorry State Of Asbestos Bankruptcies

By **Mark D. Taylor**, a partner in the Financial Restructuring and Bankruptcy practice of Arent Fox PLLC; and **Brandi A. Richardson**, an associate at the firm.

LEGAL BACKGROUNDER, April 21, 2006, 4 pages

Federal Court Finds Medical Monitoring Tort Unavailable In Texas

By **Shawn D. Bryant**, an attorney with Spriggs & Hollingsworth in Washington, D.C.

COUNSEL'S ADVISORY, April 21, 2006, 1 page

An Exaggerated And Ill-Conceived Sense Of Risk: The Ephemeral Nature Of California's Proposition 65

By **Thomas H. Clarke, Jr.**, a senior partner with Ropers, Majeski, Kohn, & Bentley in their San Francisco office.

WORKING PAPER, April 2006, 26 page

Federal Court Draws Roadmap For Scrutiny of Attorneys' Fees in "Coupon" Settlements

By **Thomas M. Smith**, Counsel at McCarter & English, LLP, in the firm's New York office, and **Natalie S. Watson**, an Associate at the firm's Newark office.

LEGAL BACKGROUNDER, April 7, 2006, 4 pages

Impending Legal Attacks On Food Ads Should Not Be Welcome In Court

By **Scott A. Elder**, a partner, and **Anna Aven Sumner**, an associate, with Alston & Bird LLP in the firm's Atlanta office.

LEGAL BACKGROUNDER, March 10, 2006, 4 pages

Regulated Industries Benefit From Illinois Consumer-Protection Ruling

By **Victor E. Schwartz**, a partner in the law firm of Shook, Hardy & Bacon L.L.P. in Washington, D.C. and **Cary Silverman**, an associate with the firm.

LEGAL BACKGROUNDER, February 10, 2006, 4 pages

Medical Monitoring: Innovative New Remedy Or Money For Nothing?

By **Steven J. Boranian**, a partner in Reed Smith LLP's San Francisco office, and **Kevin M. Hara**, a litigation associate in the firm's Oakland office.

WORKING PAPER, January 2006, 23 pages

High Courts Reject Premises Liability For Secondhand Asbestos Exposure

By **Mark A. Behrens** and **Andrew W. Crouse**, attorneys in the Public Policy Group of the law firm Shook, Hardy & Bacon L.L.P.'s Washington, D.C. office.

LEGAL OPINION LETTER, December 16, 2005, 2 pages

State Law As Health Hazard: How Prop 65 Undermines National Food Labeling
By **Gene Livingston**, a Shareholder with the law firm Greenberg Traurig, LLP in its Sacramento office, and **Lisa L. Halko**, an associate at the firm, also in its Sacramento office.
LEGAL BACKGROUNDER, December 16, 2005, 4 pages

Silica Litigation: Screening, Scheming & Suing
By **Nathan A. Schachtman**, a partner at McCarter & English LLP in the firm's Philadelphia office whose practice focuses on the defense of products liability suits involving claims of defective drugs and medical devices and toxic exposures.
WORKING PAPER, December 2005, 18 pages

Would You Like A Prop 65 Warning With Those Fries?
By **Ann Grimaldi**, a partner with the law firm McKenna Long & Aldridge LLP.
LEGAL BACKGROUNDER, November 18, 2005, 4 pages

Federal Appeals Courts Rule On Class Action Fairness Act
By **Ainsley N. Dietz**, former Director of Policy and Outreach of Washington Legal Foundation.
COUNSEL'S ADVISORY, October 7, 2005, 1 page

A Defectively Designed Suit: Deputized Trial Lawyers Twist Tort Law In Rhode Island
By **Leah Lorber**, formerly of counsel in the Public Policy Group in the Washington, D.C. office of Shook, Hardy & Bacon L.L.P. and currently Director of Public Policy - Tort Reform for GlaxoSmithKline.
LEGAL BACKGROUNDER, October 7, 2005, 4 pages

Court Endorses Tort Defenses In Diet Drug Litigation
By **Brennan J. Torregrossa**, an associate at Dechert LLP and a member of its Mass Torts & Product Liability practice group.
LEGAL BACKGROUNDER, September 23, 2005, 4 pages

U.S. Judicial Conference Considers E-Discovery Rules
By **Alfred W. Cortese, Jr.**, Managing Partner of CORTESE PLLC, Washington, D.C., who specializes in developing and advocating strategic legislative, litigation, and regulatory responses to complex public policy issues with particular emphasis on federal and state court procedural rulemaking processes.
LEGAL BACKGROUNDER, September 9, 2005, 4 pages

Michigan Court Ruling Advances Trend On Medical Monitoring
By **Mark Herrmann**, a partner, and **Brian Ray**, an associate, in the Cleveland office of Jones Day.
LEGAL BACKGROUNDER, August 26, 2005, 4 pages

Michigan High Court Rejects Claim For No-Injury Medical Monitoring
By **Leah Lorber**, of counsel in the Public Policy Group in the Washington, D.C. office of Shook, Hardy & Bacon L.L.P.
LEGAL OPINION LETTER, July 29, 2005, 2 pages

Federal Court Ruling Undermines Defendants' Ability To Appeal Class Action Certifications

By **Donald M. Falk**, a partner in the Supreme Court and Appellate Practice Group of the law firm Mayer Brown Rowe & Maw LLP, resident in the Palo Alto office; and **Fatima Goss Graves**, a former associate in the firm's Washington office, now Counsel, Education and Employment, for the National Women's Law Center.

LEGAL BACKGROUNDER, July 29, 2005, 4 pages

State Class Action Reform: Lessons From Texas

By **Pete Schenkkan**, a partner with the law firm Graves Dougherty Hearon & Moody, P.C. in Austin, Texas. He participated in the Texas Supreme Court Advisory Committee's work on the new Texas class action rule.

LEGAL BACKGROUNDER, July 29, 2005, 4 pages

State Consumer Protection Laws Elevate Food Company Liability Risks

By **Scott A. Elder** and **Anna Aven Sumner**, associates with Alston & Bird LLP in the firm's Atlanta office. Mr. Elder is a member of the firm's Product Liability and Litigation and Trial Practice groups while Ms. Sumner is a member of the Products Liability group.

LEGAL BACKGROUNDER, July 29, 2005, 4 pages

Court Dramatically Expands Strict Liability Tort Theory

By **David T. Biderman**, a partner with the law firm Perkins Coie LLP in the firm's Santa Monica office, and **David R. East**, an associate in the firm's Seattle office.

LEGAL BACKGROUNDER, June 3, 2005, 4 pages

Once Again...Ohio Legislators Approve Comprehensive Tort Reform

By **Kurtis A. Tunnell**, **Anne Marie Sferra Vorys** and **Miranda Creviston Motter** who have all worked extensively on tort reform efforts in Ohio. Mr. Tunnell is a Partner with Bricker & Eckler LLP and serves as legal counsel to the Ohio Alliance for Civil Justice (OACJ). Ms. Sferra Vorys is a Partner in the firm's litigation department. Ms. Creviston Motter is an Associate in the Firm's government relations department.

LEGAL BACKGROUNDER, May 20, 2005, 4 pages

My "Big Fat" Update: Courts Disserve Rule Of Law In Food Lawsuits Decisions

By **Michael I. Krauss**, a professor of law at George Mason University.

LEGAL BACKGROUNDER, May 6, 2005, 4 pages

California Ruling Bolsters Suits Against Class Action Counsel

By **David Price**, Senior Vice President for Legal Affairs of the Washington Legal Foundation.

COUNSEL'S ADVISORY, April 22, 2005, 1 page

Mississippi High Court Provides Clear Guidance On Mass Torts Through Asbestos Ruling

By **Margaret Oertling Cupples**, a partner in the Jackson, Mississippi office of the law firm Bradley Arant Rose & White LLP.

LEGAL BACKGROUNDER, April 22, 2005, 4 pages

Agent Orange Ruling Holds Hidden Hazards For Defense Contractors

By **David Price**, Senior Vice President for Legal Affairs of the Washington Legal Foundation.

COUNSEL'S ADVISORY, March 25, 2005, 1 page

Supreme Court Should Evaluate Impact Of Punitive Damages On Entire Trial Process
By **James Dabney Miller**, a partner with the law firm King & Spalding LLP in its Washington, D.C. office.

LEGAL BACKGROUNDER, March 25, 2005, 4 pages

Conversations With: Legal Reform - A View From The States

Features **The Honorable Dick Thornburgh**, Counsel to the law firm Kirkpatrick & Lockhart Nicholson Graham LLP, moderating a discussion with **Florida Governor Jeb Bush**; former Governor of Michigan and current President and CEO of the National Association of Manufacturers **John Engler**; and **Steve Hantler**, Assistant General Counsel to DaimlerCrysler and Chairman of the American Justice Partnership.

CONVERSATIONS WITH, Spring 2005, 10 pages

Conversations With: Legal Reform In Mississippi

Features **The Honorable Dick Thornburgh**, Counsel to the law firm Kirkpatrick & Lockhart Nicholson Graham LLP, leading a discussion with **The Honorable Haley Barbour**, Governor of Mississippi.

CONVERSATIONS WITH, Spring 2005, 6 pages

UCC Article 2 Amendments: A Defective Product And A Flawed Process

By **Holly K. Towle**, a partner with Preston Gates Ellis LLP, a full-service law firm providing legal services from strategic locations in the United States and abroad.

LEGAL BACKGROUNDER, February 11, 2005, 4 pages

State High Court Ruling Departs From Tort Principles In Consumer Protection Cases

By **Victor E. Schwartz**, a partner in the law firm of Shook, Hardy & Bacon L.L.P. in Washington, D.C., and **Leah Lorber**, of counsel to the firm.

LEGAL BACKGROUNDER, January 14, 2005, 4 pages

Federal "E-Discovery" Rules Proposal Requires Scrutiny And Comment

By **Alfred W. Cortese, Jr.**, of Cortese PLLC, Washington, D.C., who specializes in developing and advocating strategic legislative, litigation, and regulatory responses to complex public policy issues with particular emphasis on court procedural rulemaking processes.

LEGAL BACKGROUNDER, December 17, 2004, 4 pages

West Virginia Supreme Court Sets High Bar For Plaintiffs In Medical Monitoring Cases

By **Sean Wajert**, a partner at Dechert LLP and the chair of its Mass Torts & Product Liability practice group. Dechert was part of the team representing the defendants in the *Blankenship*.

LEGAL OPINION LETTER, December 17, 2004, 2 pages

Michigan High Court Ruling Offers Positive Guidance On Challenges To Tort Reform Laws

By **Glenn G. Lammi**, Chief Counsel of the Washington Legal Foundation's Legal Studies Division and **James Chang**, an Institute for Humane Studies Fellow at the Washington Legal Foundation during the summer of 2004.

LEGAL BACKGROUNDER, December 17, 2004, 4 pages

CONFIDENTIAL

A Win For Federalism: Kentucky Court Vacates Punitive Damage Award

By **Theodore B. Olson**, former Solicitor General of the United States and a partner with the law firm Gibson, Dunn & Crutcher LLP, where he serves as co-chair of the Appellate and Constitutional Law Practice Group and heads the firm's crisis management team; and **Thomas H. Dupree, Jr.**, an associate at the firm.

LEGAL OPINION LETTER, December 17, 2004, 2 pages

State Appeal Bond Reforms Protect Defendants' Due Process Rights

By **Glenn G. Lammi**, Chief Counsel of the Washington Legal Foundation's Legal Studies Division, and **Justin P. Hauke**, an Institute for Humane Studies Fellow at the Washington Legal Foundation during the summer of 2004.

LEGAL BACKGROUNDER, November 12, 2004, 4 pages

Conversations With: Civil Justice Reform

Features **The Honorable Dick Thornburgh**, Counsel to the law firm Kirkpatrick & Lockhart LLP moderating a discussion with **Bernard Marcus**, Director Emeritus to and co-founder of The Home Depot, Inc.; **Maurice ("Hank") Greenberg**, Chairman and CEO of American International Group; and **Steven Hantler**, Assistant General Counsel for Government and Regulation, DaimlerChrysler Corporation.

CONVERSATIONS WITH, Fall 2004, 8 pages

"Piggyback" Class Action Suits Don't Merit Exorbitant Fees

By **Paul D. Kamenar**, Senior Executive Counsel of the Washington Legal Foundation.

LEGAL OPINION LETTER, October 29, 2004, 2 pages

Ruling Offers Lesson For Counsel On Electronic Discovery Abuse

By **Thomas Y. Allman**, Senior Counsel with the Chicago office of the law firm Mayer, Brown, Rowe & Maw LLP and former Senior Vice President, Secretary, General Counsel and Chief Compliance Officer of BASF Corporation.

LEGAL BACKGROUNDER, October 15, 2004, 4 pages

FBI Arrests Drug Injury Claimants For Filing False Claims

By **David Price**, Senior Vice President for Legal Affairs of the Washington Legal Foundation.

COUNSEL'S ADVISORY, October 15, 2004, 1 page

A Punitive Damages Primer: Post-State Farm Strategies

By **Christina J. Imre**, a partner with the San Francisco law firm Sedgwick, Detert, Moran & Arnold LLP. Foreword by **Laurel Thurston**, Senior Counsel and Assistant Vice President, Republic Indemnity Company.

MONOGRAPH, October 2004, 87 pages

Stopping Frivolous Litigation And Protecting Small Businesses

By **Congressman Lamar Smith**, who has represented the residents of the 21st Congressional District of Texas since 1987.

LEGAL OPINION LETTER, September 3, 2004, 2 pages

Heavyweight Litigation: Will Public Nuisance Theories Tackle The Food Industry?

By **Charles H. Moellenberg, Jr.**, a partner in the law firm Jones Day in its Pittsburgh office.

LEGAL BACKGROUNDER, September 3, 2004, 4 pages

New California Law Grants State 75% Of Punitive Damage Award

By Victor E. Schwartz, Mark A. Behrens and Cary Silverman, attorneys in the Public Policy Group of Shook, Hardy & Bacon, L.L.P. in Washington, D.C.
LEGAL OPINION LETTER, September 3, 2004, 2 pages

Florida High Court Should Reject "Regulation Through Litigation"

By Glenn G. Lammi, Chief Counsel of the Washington Legal Foundation's Legal Studies Division.
LEGAL BACKGROUNDER September 3, 2004, 4 pages

Rulings Strip Away Common-Sense Tort Defense In New York State

By David Glazer, an associate with the law firm Smith Mazure in New York City.
LEGAL OPINION LETTER, August 20, 2004, 2 pages

State High Court Strikes Latest Blow Against Tort Reform Nullification

By Thomas J. Foley, a Principal and Founder of the Detroit-area law firm of Foley, Baron & Metzger, PLLC where he heads the Products and Complex Liability Practice Group and Jill I. Zyskowski, an associate with the firm.
COUNSEL'S ADVISORY, August 6, 2004, 2 pages

Lawyers Beware: State High Court Ruling Expands Tort Of Malicious Prosecution

By Christina Imre, a partner in the Los Angeles office of Sedgwick, Detert, Moran & Arnold LLP, and Douglas Collodel, a special counsel with the firm.
LEGAL OPINION LETTER, July 23, 2004, 2 pages

The End Of The "Sting?" — California Supreme Court To Review Punitive Damage Standards

By David T. Biderman, a litigation partner in Perkins Coie LLC who practices in the San Francisco and Los Angeles offices; and Kyann C. Kalin, an associate in Perkins Coie LLC who practices in the San Francisco office.
LEGAL BACKGROUNDER, July 23, 2004, 4 pages

"Do-It-Yourself" Tort Reform? — Focus On Medical Experts Could Ebb Tide Of Malpractice Lawsuits

By Dr. Jeffrey Segal, founder and CEO of Medical Justice Services, Inc. and a board certified neurosurgeon and fellow of the American College of Surgeons, and Michael Sacopulos, Counsel to Medical Justice Services, Inc. and a partner in Sacopulos, Johnson, and Sacopulos in Terre Haute, Indiana.
LEGAL BACKGROUNDER, July 23, 2004, 4 pages

Mississippi Joins The Ranks Of Tort Reform Success Stories

By David W. Clark, a partner in the Jackson, Mississippi office of the law firm Bradley Arant Rose & White LLP.
LEGAL OPINION LETTER June 25, 2004, 2 pages

Regulation And The Role Of The Courts: Drawing A Line In A Sandstorm

By Peter A. Bisbecos, Director, Legislative and Regulatory Affairs, of The National Association of Insurance Companies.
LEGAL BACKGROUNDER June 25, 2004, 4 pages

CONFIDENTIAL

How We Lost Our Way: The Road To Civil Justice Reform

By **James M. Wootton**, a partner with the law firm Mayer, Brown, Rowe & Maw, LLP in its Washington, D.C. office. Foreword by **Thomas A. Gottschalk**, Executive Vice President & General Counsel of General Motors Corporation.

WORKING PAPER, May 2004, 41 pages

Study On Class Actions Attorney Fees Fails To Undermine Case For Reform

By **Victor E. Schwartz** and **Kimberly D. Sandner**, attorneys with the law firm Shook, Hardy & Bacon L.L.P. in Washington, D.C., and **Sherman Joyce**, President of the American Tort Reform Association.

LEGAL BACKGROUNDER, April 16, 2004, 4 pages

A Progress Report On Rule 23(f): Five Years Of Immediate Class Certification Appeals

By **Brian Anderson**, a partner in the Washington, D.C. office of O'Melveny & Myers LLP specializing in class actions and other complex litigation, and **Patrick McLain**, who was a law clerk to The Honorable Jane A. Restani of the U.S. Court of International Trade.

LEGAL BACKGROUNDER, March 19, 2004, 4 pages

Information Security Vulnerabilities: Should We Litigate Or Mitigate?

By **Jeffrey D. Neuburger**, a partner in the New York office of the law firm Brown Raysman Millstein Felder & Steiner LLP and the Chair of the firm's Information Technology Practice Group, and **Maureen E. Garde**, an associate at the firm and member of that practice group.

WORKING PAPER, March 2004 17 pages

New State Law Permits Private Bounty Hunter Suits Against California Employers

By **Jeffrey M. Tanenbaum**, a partner in the San Francisco office of the law firm Nixon Peabody LLP.

COUNSEL'S ADVISORY, February 20, 2004, 1 page

Courts Wield Harsh Penalties For Abusing The Discovery Process

By **Evelyn Alfonso**, an associate in the Newark, New Jersey law firm Podvey, Sachs, Meanor, Catenacci, Hildner & Coccoziello, P.C.

LEGAL OPINION LETTER, January 30, 2004, 2 pages

Proper Management, Not Courts Can Best Control Litigation Costs

By **Lawrence A. Salibra, II**, Senior Counsel of Alcan Aluminum Corporation.

LEGAL OPINION LETTER, January 30, 2004, 2 pages

The Seven Myths Of Highly Effective Plaintiffs' Lawyers

By **Steven B. Hantler**, Assistant General Counsel, Daimler Chrysler Corporation.

LEGAL BACKGROUNDER, January 16, 2004, 4 pages

Federal Tax Deduction For Punitive Damages Payments Comes Under Fire

By **Mark A. Behrens** and **Kimberly D. Sandner**, attorneys in the Public Policy Group of Shook, Hardy & Bacon L.L.P. in Washington, D.C.

LEGAL OPINION LETTER, December 19, 2003, 2 pages

Conversations With: Punitive Damages

Features **The Honorable Dick Thornburgh**, Counsel to the law firm Kirkpatrick & Lockhart LLP moderating a discussion with **Andrew L. Frey** and **Evan M. Tager** of the law firm Mayer, Brown, Rowe & Maw LLP.

CONVERSATIONS WITH, December 2003, 10 pages

Punitive Damages After State Farm: Mixed Results In The Lower Courts

By **Scott E. Barton**, a senior at Grinnell College and a former Institute for Humane Studies fellow at Washington Legal Foundation.

LEGAL OPINION LETTER, October 31, 2003, 2 pages

Liggett Group v. Engle: A Case Study Of Class Action Abuse

By **Michael I. Krauss**, a professor of law at George Mason University.

LEGAL BACKGROUNDER, October 31, 2003, 4 pages

Development Of New Federal "E-discovery" Rules Advancing

By **Alfred W. Cortese, Jr.**, an attorney with Cortese PLLC, Washington, D.C. specializing in developing and advocating strategic legislative, litigation, and regulatory responses to complex public policy issues with particular emphasis on court procedural rulemaking processes.

LEGAL BACKGROUNDER, October 31, 2003, 4 pages

Trials In "Rocket Dockets": More Than Just A Legal Strategy

By **Howard Scher**, a partner in the Philadelphia office of Buchanan Ingersoll PC.

LEGAL OPINION LETTER, October 17, 2003, 2 pages

Regulation By Litigation And The Limits Of Government Power

By **Charles H. Moellenberg Jr.**, a partner in the Pittsburgh office of the law firm Jones Day who specializes in nationwide coordination of major product liability litigation.

WORKING PAPER, October, 2003, 22 pages

Targeted Policies Can End Forum Shopping

By **John Beisner**, an attorney with the Washington, D.C. office of the law firm of O'Melveny & Myers LLP and **Jessica Davidson Miller**, also an attorney with the firm.

LEGAL BACKGROUNDER, September 5, 2003, 4 pages

Clearing Uninjured Plaintiffs From The Tort System: The Road To A Solution

By **Frederick C. Dunbar** and **Denise Neumann Martin**, Senior Vice Presidents at National Economic Research Associates, Inc.

LEGAL BACKGROUNDER, July 25, 2003, 4 pages

Fear Of Cancer Claims After Norfolk & Western Railway v. Ayers

By **Stephen B. Kinnaird**, a partner in the Washington, D.C. office of Sidley Austin Brown & Wood LLP.

LEGAL BACKGROUNDER, July 11, 2003, 4 pages

State Farm Ruling Has Impact On State Punitive Damages Cases

By **Paul J. Beard II**, a litigation associate at the Los Angeles law firm of Hennigan, Bennett & Dorman LLP.

LEGAL OPINION LETTER, July 11, 2003, 2 pages

CONFIDENTIAL

States Disserve The Public Interest When Hiring Contingent Fee Lawyers

By **Don Stenberg**, Nebraska's Attorney General from 1991 to 2002.

LEGAL BACKGROUNDER, June 20, 2003, 4 pages

Nationwide Class Actions Belong In Federal Courts

By **Judith Mintel**, an Associate Counsel with State Farm Mutual Automobile Insurance Company.

LEGAL BACKGROUNDER, June 20, 2003, 4 pages

Conversations With: How to Solve the Asbestos Litigation Crisis

Features **The Honorable Dick Thornburgh**, Counsel to the law firm Kirkpatrick & Lockhart LLP, moderating a discussion with **Victor E. Schwartz**, a partner with the law firm Shook Hardy & Bacon L.L.P., **Robert E. Vagley**, President of the American Insurance Association, and **William T. Gallagher**, Senior Vice President, Secretary, and General Counsel of Crown Cork & Seal.

CONVERSATIONS WITH, May 27, 2003, 10 pages

Applying England's "Woolf Rules" In America Could Help Rein In Securities Class Action Suits

By **Daniel J. Popeo**, Chairman and General Counsel to Washington Legal Foundation (WLF), and **Glenn Lammi**, Chief Counsel to WLF's Legal Studies Division.

LEGAL BACKGROUNDER, May 23, 2003, 4 pages

Judges Must Play Key Role In Stemming Tide Of Asbestos Litigation

By **Steve Hantler**, Assistant General Counsel, DaimlerChrysler Corporation.

LEGAL BACKGROUNDER, May 9, 2003, 4 pages

"Claims Shaving": An Emerging Threat To Rights Of Class Action Plaintiffs

By **Brian P. Brooks**, a litigation partner in the Washington, D.C. office of the law firm O'Melveny & Myers LLP.

LEGAL BACKGROUNDER, April 25, 2003, 4 pages

Michigan High Court Upholds Drug Product Liability Reform

By **Thomas J. Foley**, a founder of the Detroit area law firm Foley, Baron & Metzger, PLLC.

COUNSEL'S ADVISORY, April 25, 2003, 1 page

Shocking State Jury Award Highlights Deep Flaws In Civil Justice System

By **James C. Martin** and **Lisa M. Baird**, partners in the Los Angeles office of Reed Smith.

LEGAL OPINION LETTER, April 25, 2003, 2 pages

Appeals Court To Review Defiant Punitive Damages Ruling

By **Thomas H. Dupree, Jr.**, an attorney in the Washington, D.C. office of the law firm Gibson, Dunn & Crutcher.

LEGAL OPINION LETTER, April 11, 2003, 2 pages

Suits Against "Big Fat" Tread On Basic Tort Liability Principles

By **Michael I. Krauss**, a professor of law at George Mason University.

LEGAL BACKGROUNDER, March 14, 2003, 4 pages

The Asbestos Litigation Crisis: Who Will Clean Up This Elephantine Mess?

By **Eric Hellerman**, Of Counsel to the law firm Covington & Burling in its New York office.

WORKING PAPER, March 2003, 45 pages

State Court Asbestos Rulings Provide Guidance To Congress

By **John S. Stadler**, Counsel in the Boston office of the law firm Nixon Peabody LLP.
LEGAL OPINION LETTER, January 31, 2003, 2 pages

New Model Law Designed To Improve Jury Service In State Courts

By **Victor E. Schwartz**, **Mark A. Behrens**, and **Cary Silverman**, attorneys in the Public Policy Group in the Washington, D.C. office of the law firm Shook, Hardy & Bacon LLP.
COUNSEL'S ADVISORY, January 17, 2003, 1 page

New York Court Ruling Impacts "Peripheral" Asbestos Defendants

By **John S. Stadler**, Counsel to the Boston law firm Nixon Peabody LLP.
COUNSEL'S ADVISORY, December 20, 2002, 1 page

Federal Appeals Court Urges Congressional Action On Asbestos Liability Crisis

By **Mark D. Plevin** and **Leslie A. Epley**, attorneys with the Washington, D.C. law firm of Crowell & Moring LLP.
LEGAL BACKGROUNDER, December 20, 2002, 4 pages

State Courts Should Reject Nationwide Class Status For Consumer Fraud Lawsuits

By **Ronni E. Fuchs**, a partner in the Philadelphia law firm Dechert.
LEGAL BACKGROUNDER, December 6, 2002, 4 pages

New Law Brings Fairness To Pennsylvania Civil Justice System

By **Ted Haussman, Jr.** and **Scott M. Brevic**, attorneys with the Philadelphia law firm Schnader Harrison Segal & Lewis and members of the firm's Products Liability and Mass Torts Practice Group and the Environmental Group.
COUNSEL'S ADVISORY, December 6, 2002, 2 pages

Consumers And Markets Suffer When Lawyers Regulate Insurance

By **Peter Bisbecos**, Legislative and Regulatory Counsel of the National Association of Mutual Insurance Companies, **Victoria E. Fimea**, Senior Counsel, Litigation, of the American Council of Life Insurers, **David F. Snyder**, Assistant General Counsel of the American Insurance Association (AIA), and **Kenneth A. Stoller**, Counsel of the AIA.
LEGAL BACKGROUNDER, October 18, 2002, 4 pages

State Court Denies Lawyers Undeserved Fees In Tobacco Case

By **Glenn G. Lammi**, Chief Counsel to Washington Legal Foundation's Legal Studies Division.
COUNSEL'S ADVISORY, October 18, 2002, 1 page

FTC Acts To Provide Information To Consumers Of Legal Services

By **Victor E. Schwartz**, **Mark A. Behrens**, and **Cary Silverman**, attorneys in the Public Policy Group of Shook, Hardy & Bacon L.L.P in Washington, D.C., and **Rochelle M. Tedesco**, an attorney formerly with the firm.
COUNSEL'S ADVISORY, October 18, 2002, 1 page

Court Correctly Dismisses Class Action Suit Filed Under Medicare Law

By **Douglas E. Motzenbecker**, a partner with the Newark, New Jersey law firm Podvey, Sachs, Meanor, Catenacci, Hildner & Cocozziello, P.C.
LEGAL OPINION LETTER, October 18, 2002, 2 pages

CONFIDENTIAL

Kentucky High Court Rejects Medical Monitoring Actions

By **Victor E. Schwartz** and **Mark A. Behrens**, attorneys in the Public Policy Group of Shook, Hardy & Bacon, Washington, D.C., and **Rochelle M. Tedesco**, an attorney formerly with the firm.

COUNSEL'S ADVISORY, September 6, 2002, 1 page

Federalism And Congressional Reform of National Class Actions

By **The Honorable William H. Pryor, Jr.**, former Attorney General of Alabama.

WORKING PAPER, September 2002, 22 pages

Court Ruling Wrongly Creates New Right To Sue Telecom Companies

By **Steven G. Bradbury**, a partner, and **Grant M. Dixon**, an associate, both with the law firm Kirkland & Ellis in its Washington, D.C. office.

LEGAL OPINION LETTER, August 30, 2002, 2 pages

Regulators Or Juries: Who Can Best Protect Insurance Consumers?

By **Peter Bisbecos**, Legislative and Regulatory Counsel of the National Association of Mutual Insurance Companies.

LEGAL BACKGROUNDER, August 23, 2002, 4 pages

Remedy Without Risk: An Overview Of Medical Monitoring

By **Hugh R. Whiting**, Partner-in-Charge in the Houston office of the law firm Jones Day.

CONTEMPORARY LEGAL NOTE, August 2002, 40 pages

California Court Should Bar Prop 65 Anti-Chocolate Suit

By **Jeffrey B. Margulies**, a shareholder with the Los Angeles law firm Parker, Milliken, Clark, O'Hara & Samuelian.

LEGAL OPINION LETTER, July 26, 2002, 2 pages

Court Upholds State Law Limiting Asbestos Liability

By **Joanne Greenhaus Noble** and **Samuel W. Silver**, attorneys with the law firm Schnader Harrison Segal & Lewis LLP, resident in its Philadelphia office.

LEGAL OPINION LETTER, July 12, 2002, 2 pages

Legal Ethics And Clients' Rights: Casualties Of Asbestos Litigation?

By **Richard O. Faulk**, Chair of the Environmental Practice Group at the Houston law firm Gardere Wynne Sewell, LLP.

LEGAL BACKGROUNDER, May 24, 2002, 4 pages

Asbestos Litigation Crisis Requires Policymakers' Attention

By **Richard O. Faulk**, Chair, Environmental Practice Group, of the law firm Gardere Wynne Sewell, LLP in Houston.

LEGAL BACKGROUNDER, February 22, 2002, 4 pages

Federal Court's Exxon Ruling Sets Punitive Damages Precedent

By **Thomas H. Dupree, Jr.**, an attorney in the Washington, D.C. office of the law firm Gibson, Dunn & Crutcher.

LEGAL BACKGROUNDER, February 22, 2002, 4 pages

Court Ruling Reveals Absurdity Of California's Proposition 65

By **Jeffrey B. Margulies**, a shareholder with the Los Angeles law firm Parker, Milliken, Clark, O'Hara & Samuelian.

LEGAL BACKGROUNDER, February 8, 2002, 4 pages

State Jury Demonstrates Deep Flaws In "Medical Monitoring"

By **Kathleen L. Blaner**, former special counsel with the law firm Covington & Burling in its Washington, D.C. office.

LEGAL BACKGROUNDER, December 14, 2001, 4 pages

A Corporate Counsel's Guide To Discovery In The Information Age

By **David E. Dukes**, **James K. Lehman**, **Michael W. Hogue**, and **Jason Sprenkle**, attorneys with the South Carolina law firm Nelson Mullins Riley & Scarborough, LLP. Foreword by **The Honorable Shira A. Scheindlin** of the U.S. District Court for the Southern District of New York. Introduction by **Thomas Y. Allman**, Senior Vice President and General Counsel, BASF Corporation.

MONOGRAPH, November 2001, 61 pages

Class Action Trials Commonly Deprive Defendants Of Due Process

By **James D. Griffin**, a partner in the Kansas City, Missouri office of the law firm Blackwell Sanders Peper Martin LLP and **Kristopher A. Kuehn**, formerly a partner in the firm's Overland Park, Kansas office.

LEGAL BACKGROUNDER, November 2, 2001, 4 pages

Influential Court Tightens Class Action Certification Standards

By **Mark S. Baldwin**, a partner, and **Sandra K. Davis**, an associate, in the Hartford, Connecticut office of the law firm Brown Rudnick Freed & Gesmer.

LEGAL OPINION LETTER, October 5, 2001, 2 pages

Key Safeguard Against Meritless Suits Under Attack In California

By **Michael K. Brown** and **Lisa M. Baird**, attorneys with the Los Angeles office of the law firm Reed Smith.

LEGAL BACKGROUNDER, August 24, 2001, 4 pages

Genetically Enhanced Seed Suits Not Rooted In Law Or Logic

By **Rachel G. Lattimore** and **Raquel Whiting**, attorneys with the Washington, D.C. law firm Areñt Fox Kintner Plotkin & Kahn, PLLC.

LEGAL BACKGROUNDER, July 27, 2001, 4 pages

Pennsylvania High Court Ruling Clouds Key Product Liability Issue

By **Samuel W. Silver**, a partner with the law firm Schnader Harrison Segal & Lewis LLP, resident in its Philadelphia office. **Alex Helderman**, an associate in the Product Liability and Mass Tort practice group, assisted with this article.

LEGAL OPINION LETTER, July 13, 2001, 2 pages

High Court Imposes New Standard For Review of Punitive Damages

By **Christina J. Imre**, an appellate attorney and a director of the law firm Crosby, Heafey, Roach & May in its Los Angeles office.

LEGAL BACKGROUNDER, June 29, 2001, 4 pages

CONFIDENTIAL

Courts Properly Dismiss Meritless Ritalin Litigation

By **James M. Beck**, a partner with the Philadelphia law firm Pepper Hamilton LLP.
LEGAL BACKGROUNDER, June 29, 2001, 4 pages

State High Court Justice Injects Reason Into Punitive Damages Debate

By **Ellis J. Horvitz**, founder of and senior partner with the Encino, California appellate law firm of Horvitz & Levy LLP, and **Stephanie Rae Williams**, an associate at Horvitz & Levy LLP.

LEGAL OPINION LETTER, June 1, 2001, 2 pages

California High Court Opinion Frowns On Nationwide Class Actions

By **Luanne Sacks**, **Paul D. Fogel** and **Michele Floyd**, partners in the San Francisco office of the law firm Reed Smith.

LEGAL BACKGROUNDER, June 1, 2001, 4 pages

Government "Regulation By Litigation" Must Be Terminated

By **The Honorable William H. Pryor, Jr.**, Attorney General of Alabama.

LEGAL BACKGROUNDER, May 18, 2001, 4 pages

Changes Proposed In European Product Liability Law

By **Victor E. Schwartz**, a partner in the law firm of Shook, Hardy & Bacon in Washington, D.C. and **Leah Lorber**, of counsel to the firm.

LEGAL BACKGROUNDER, March 9, 2001, 4 pages

Is The Tide Turning On "Medical Monitoring" Claims?

By **Ian Gallacher**, an associate professor at American University's Washington College of Law.

LEGAL BACKGROUNDER, March 23, 2001, 4 pages

Changes Proposed In European Product Liability Law

By **Victor E. Schwartz**, a partner in the law firm of Shook, Hardy & Bacon in Washington, D.C. and **Leah Lorber**, of counsel to the firm.

LEGAL BACKGROUNDER, March 9, 2001, 4 pages

Mass Tort Ruling Denies Lawyers A Punitive Damages Windfall

By **Ronni E. Fuchs** and **Carolyn H. Feeney**, attorneys with the Dechert law firm in Philadelphia.

LEGAL BACKGROUNDER, February 9, 2001, 4 pages

ACTIVITIES REPORT

to the

**WASHINGTON LEGAL FOUNDATION
BOARD OF TRUSTEES**

**PROTECTING
COMMERCIAL SPEECH RIGHTS**

August 15, 2006

TABLE OF CONTENTS

INTRODUCTION 1

I. LITIGATION AND REGULATORY PROCEEDINGS 1

 A. Print and Broadcast Advertising and Promotion 2

 B. Product Labeling 8

 C. Outdoor Advertising 12

 D. Government Enforcement Actions Against Commercial Speakers 14

 E. Private Tort Actions Against Commercial Speakers 15

 F. Discriminatory Treatment of Commercial Speakers 19

 G. Compelled Speech 20

II. CIVIC COMMUNICATIONS PROGRAM 23

 A. Media Briefings 23

 B. Web Seminars 25

 C. Advocacy Ads 25

 D. Public Appearances 26

III. PUBLICATIONS 29

AUGUST 15, 2006

**ACTIVITIES REPORT TO THE
WASHINGTON LEGAL FOUNDATION
BOARD OF TRUSTEES**

**PROTECTING
COMMERCIAL SPEECH RIGHTS**

The ideals upon which America was established — individual freedom, limited government, a free-market economy, and national security — are the same principles that the Washington Legal Foundation (WLF) defends in the public interest arena. Adherence to those principles is essential to maintaining Americans' high standard of living, and, more important, it is essential to maintaining America's position as the freest nation in the world.

Since its founding in 1977, the Washington Legal Foundation (WLF) has labored to protect the right of all Americans to speak freely. That right has come under increasing attack in recent years, particularly when the speaker is a company in a moment of crisis or in a politically vulnerable industry. All too often, members of the business community have found their right to speak freely being challenged by opportunistic politicians.

Regulators and activists often believe they can make the world a better place by silencing companies they dislike, or by forcing those companies to disseminate government-mandated messages. WLF believes that freedom of speech is for everyone — as does the U.S. Supreme Court. Accordingly, WLF has been at the forefront of fighting for the right of business enterprises to engage in truthful and non-misleading speech.

WLF has worked to achieve those objectives through precedent-setting litigation, involvement in government regulatory proceedings, publication of timely articles on speech-related issues, and tireless advocacy for free-market solutions in the news media and other public forums. This report highlights many of WLF's significant commercial speech-related activities.

I. LITIGATION AND REGULATORY PROCEEDINGS

Litigation is the backbone of WLF's public interest programs. The Foundation litigates across the country before state and federal courts and administrative agencies. WLF represents only those who are otherwise unable to retain counsel on their own. Its clients have included numerous individuals who have been denied the right to speak freely on business-related issues, as well as other individuals who have been denied access to truthful information that a government bureaucrat does not want them to hear.

A. Print and Broadcast Advertising and Promotion

Government officials often view advertising and product promotion as a waste of resources that serves only to encourage unwarranted consumer demand for products. WLF strongly disagrees; it believes that truthful advertising has numerous public benefits — particularly increasing public awareness about the types of products available to meet consumer needs. In the medical arena, government officials may become upset when increased consumer awareness leads to increased consumer demand (and thereby may drive up the cost of some government programs), but WLF opposes government efforts to keep consumers in the dark merely to assist in budget-balancing efforts. Accordingly, WLF has battled in the courts and before administrative agencies to lift advertising restrictions, regulations that prevent dissemination of truthful information (such as information on off-label uses of FDA-approved products), and rules that limit discussions at professional gatherings (such as Continuing Medical Education events).

“DDMAC Watch.” WLF has concluded that the FDA office that regulates prescription drug advertising, DDMAC (an acronym for the Division of Drug Marketing, Advertising, and Communications), routinely has failed to respect the First Amendment rights of pharmaceutical companies whose activities it is monitoring. In response, WLF in 2005 launched its “DDMAC Watch” program, designed to monitor DDMAC’s activities. Under the program, when DDMAC sends a regulatory letter to a drug company employing theories that are legally deficient or ill-advised, WLF will *immediately* send back a response letter to DDMAC identifying the ways in which this is so. The goal of the program is to alert the press and public to abuses occurring at DDMAC. As of August 2006, WLF has responded to 27 letters from DDMAC and related agencies; those letters were sent to Ely Lilly, Endo Pharmaceuticals, MedImmune Vaccines, Dutch Ophthalmic USA, Hoffman LaRoche, Abbott Laboratories, Pfizer, Actelion Pharmaceuticals US, SuperGen, Nephryx, ISTA Pharmaceuticals, Gen Trac, Medicis Pharmaceuticals, Sankyo Pharma, Duramed Pharmaceuticals, Biogen Idec, Mayne Pharma (USA), ZLB Behring, Palatin Technologies, InterMune, VaxGen, Bioniche Pharma Group, Sandoz, BIPI, Wyeth Pharmaceuticals, PrimPharm, and GlaxoSmithKline.

Washington Legal Foundation v. Henney. On February 11, 2000, the U.S. Court of Appeals for the District of Columbia Circuit dismissed FDA’s appeal from a district court decision that struck down FDA regulations that severely restricted the flow of truthful information regarding off-label uses of FDA-approved drugs and medical devices. The decision was a major victory for WLF in its long-running battle against FDA speech restrictions; WLF had filed suit against FDA in 1994, after FDA rejected a 1993 WLF Citizen Petition asking that the regulations be lifted. In 1998 and 1999, the district court ruled that the regulations violated the First Amendment rights of consumers who wished to learn truthful information about off-label product uses that are widely accepted within the medical community as safe and effective. As a result of WLF’s victory, FDA has not initiated enforcement actions against any of the manufacturers who have exercised their First Amendment rights by distributing peer-reviewed journal articles that discuss off-label uses of their products.

FDA Testimony Regarding Direct-to-Consumer Pharmaceutical Advertising. On November 2, 2005, WLF Chief Counsel Richard Samp testified before an FDA panel in support of expanding the rights of pharmaceutical companies to engage in direct-to-consumer (DTC) advertising. Samp asserted that FDA's Division of Drug Marketing, Advertising, and Communications (DDMAC) needs to rein in its efforts to suppress advertising, and step in only when advertisements are likely to mislead consumers. When FDA announced that it would be holding hearings in November 2005, its announcement suggested that FDA was considering moving in the other direction and imposing additional restrictions on advertising. Many hearing witnesses called for severely limiting drug ads, branding them as inherently biased and misleading. WLF's Samp countered that DTC advertising has played a vital public health role in recent years by increasing consumer awareness of treatment options.

In re: ACCME Restrictions on Continuing Medical Education. On January 29, 2003, WLF filed comments with the Accreditation Council for Continuing Medical Education (ACCME), severely criticizing the Council for its proposal to impose draconian restrictions on who may speak at CME activities. WLF argued that the proposed restrictions are an unwarranted infringement on free speech rights. Pre-2003 ACCME standards were designed to ensure unbiased CME presentations by, among other things, requiring speakers to disclose whether they have received any funding from the manufacturer of any of the drugs being discussed. The proposed standards went considerably further; they would have altogether prohibited doctors who had been compensated by a pharmaceutical company from speaking at a CME activity. WLF noted in its comments that most of the top medical authorities in the country are employed in some capacity by one or more of the country's drug companies and thus would no longer be permitted to participate in CME events. WLF argued that without the participation of top doctors, CME would no longer be the important source of new medical information that it is today. WLF attorneys repeatedly voiced their criticisms of the proposed restrictions at several well-attended ACCME-related forums in 2003. The ACCME board of directors approved new rules on April 1, 2004, and they took effect in early 2005. However, in response to criticisms from WLF and others, the ACCME somewhat modified the restrictions such that they are considerably less objectionable than earlier versions had been.

In re: FDA Request for Comments on First Amendment Issues. FDA has lost several major First Amendment lawsuits in recent years, including *WLF v. Henney* (see above). FDA responded in 2002 by requesting public input on whether any current FDA policies violate the First Amendment. On September 13, 2002, WLF filed extensive comments, citing a broad array of FDA regulatory activities that violate the First Amendment rights of those seeking to speak truthfully about pharmaceutical products. On October 28, 2002, WLF filed a second round of comments, responding to arguments (made by several U.S. Senators in connection with the initial round of comments) that public health concerns justify exempting FDA from First Amendment constraints applicable to other government entities. WLF criticized the contention of those Senators that consumers are likely to misuse truthful information. FDA has pledged to address these First Amendment concerns, but it has yet to do so in a systematic manner.

Citizen Petition Regarding Restrictions on Truthful Speech. Following WLF's victory in

WLF v. Henney (see above), FDA began to suggest that it was not bound by the court's decision in WLF's favor. FDA issued statements to manufacturers, suggesting that they might be sanctioned for engaging in the types of off-label speech that *WLF v. Henney* had held to be constitutionally protected. Accordingly, on May 23, 2001, WLF filed a Citizen Petition with FDA, urging the agency to repudiate those statements and to announce that it had lifted restrictions on manufacturers' rights to disseminate non-misleading information concerning off-label uses of FDA-approved products. WLF argued that by threatening enforcement action against manufacturers who exercise their free-speech rights, FDA was violating the First Amendment rights of manufacturers who wish to speak in a non-misleading manner about off-label uses of their products, and of those who wish to hear such speech. WLF noted that *WLF v. Henney* had resulted in a ruling that the First Amendment prohibits FDA from restricting manufacturer dissemination of "enduring materials" (medical texts and reprints of peer-reviewed medical journal articles) that discuss off-label uses of FDA-approved products. WLF charged that FDA was flouting that ruling by threatening enforcement action against manufacturers who disseminate enduring materials. FDA's response to the petition amounted to another WLF victory. Although continuing to argue that the ruling in *WLF v. Henney* was not as broad as WLF asserted, FDA pledged that in the future (in light of its limited resources) it would not bring enforcement actions based on the types of manufacturer speech described by WLF.

Investigating Efforts to Evade WLF Courtroom Victory. Although WLF established in *WLF v. Henney* (see above) that the First Amendment protects the right of drug manufacturers, in certain instances, to disseminate truthful information about off-label uses of their products, WLF has become increasingly concerned that various federal officials are seeking to evade that decision. In particular, the United States Attorney's office in Boston has threatened criminal prosecution of companies that disseminate truthful off-label information, while other federal officials have indicated that such conduct may violate the federal False Claims Act or the anti-kickback statute. In the past two years, WLF has been investigating whether such federal officials are violating the terms of the injunction entered in *WLF v. Henney*. That investigation includes a series of document requests (pursuant to the Freedom of Information Act) directed to (among others) FDA and the Office of Inspector General of the U.S. Department of Health and Human Services.

Oversight of Criminal Probes Into Allegedly Improper Drug Promotion. In connection with the investigation described above, WLF quickly concluded that criminal probes into allegedly improper drug promotion are not being supervised effectively by officials from the U.S. Department of Justice (DOJ) in Washington. On March 24, 2005, WLF filed a petition with the DOJ, urging it to remove the Office of Consumer Litigation ("OCL," a branch of DOJ located within the Civil Division) from its oversight and supervisory role in criminal cases arising under the Food, Drug, and Cosmetic Act (FDCA) involving alleged improper promotion of pharmaceuticals and medical devices. WLF charged that OCL has failed in that role and has done little to develop a coherent federal government policy regarding when such criminal probes are warranted. WLF said that OCL has simply rubber-stamped whatever criminal probe local U.S. Attorney Offices have sought to initiate. WLF asked that the coordination role be reassigned to an office within DOJ's Criminal Division, which has far more expertise and experience in addressing the issues inherent in any criminal probe. WLF said that it is particularly concerned about the need for effective DOJ

coordination in this area because criminal probes of promotional activities have the potential to adversely affect the nation's health care delivery system. FDA has not yet responded to WLF's petition.

Proposed Restrictions on Alcohol Advertising and Marketing. On November 1, 2005, WLF wrote to the Utah Attorney General, who also serves as head of the National Association of Attorneys General Task Force on Youth Access to Alcohol, to object to certain initiatives being undertaken by the Task Force. WLF argued that some of the Task Force's efforts to restrict alcohol advertising violate the First Amendment rights of product manufacturers. WLF argued that the Task Force had no basis for attempting to ban advertising in publications with more than a negligible youth readership; WLF cited Supreme Court decisions that prohibit government from barring truthful commercial speech aimed at adults simply because some children might see the advertisements. WLF also argued that the Task Force's proposed regulations of Flavored Malt Beverages are unwarranted and based on a misunderstanding of the manner in which these products have been marketed.

Tax Deductibility of Drug Advertising. After a U.S. Senator introduced legislation that would deny tax deductibility for pharmaceutical advertising for any drug company that sought to block reimportation of its drugs to the United States, WLF was asked by Capitol Hill officials to provide an analysis of the legislation's constitutionality. In an October 20, 2004 legal memorandum to Senator Charles Grassley and others, WLF concluded that the legislation would violate First Amendment rights. WLF noted that the bill threatened to deny speech-related tax deductions to a small group of companies in a single industry, while it would continue to grant tax deductions to similarly situated companies in other industries. WLF pointed out that the bill's sponsor admitted that the bill's sole purpose was to coerce pharmaceutical companies not to take actions designed to prevent importation of price-controlled prescription drugs. WLF argued that, under those circumstances, the bill could only be deemed speech regulation (not a mere denial of a speech subsidy) and thus could not pass muster under established First Amendment case law. After WLF submitted its analysis, the bill has not advanced out of committee.

WLF Petition Regarding Direct-to-Consumer Advertising of Prescription Drugs. In 1997, FDA adopted substantial revisions to its direct-to-consumer advertising policy. FDA's action was in direct response to WLF's July 20, 1995 Citizen Petition that sought relaxation of FDA restrictions on prescription drug advertising. The petition argued that those restrictions violated the First Amendment rights of drug manufacturers to convey truthful information to consumers, as well as the rights of consumers to receive such information. In particular, WLF asked FDA to eliminate: (1) the "brief summary" requirement, which often renders advertising non-cost-effective by requiring hundreds of words to be added to advertising; (2) the "fair balance" requirement, a totally subjective requirement that permits FDA to reject any advertisement it does not like; and (3) the requirement that advertisements be submitted to FDA for preclearance before being published. FDA's new policy substantially relaxed the "brief summary" requirements with respect to broadcast advertising. As a result of this change, television advertising of prescription drugs has increased substantially over the past eight years, and consumers have received significantly more information about these

products.

In re: Television Product Placement. The Federal Trade Commission issued an opinion letter on February 10, 2005, rejecting a petition from an activist group urging greater regulation of product placement on television. The pro-regulatory petition had been filed by Commercial Alert, an activist group co-founded by Ralph Nader. Commercial Alert petitioned the FTC and the FCC in September, 2003, to adopt new regulations that would mandate a warning for all instances of product placement on television. WLF had filed a response arguing that product placements are not harmful or deceptive. WLF further argued that even if Commercial Alert could show some harm from product placements, the proposed regulations would violate freedom of speech as defined in U.S. Supreme Court cases. Coverage of WLF's response in *The Hollywood Reporter* and elsewhere raised awareness of the threat to commercial speech rights. The FTC agreed with WLF's position that paid product placement does not mislead or confuse consumers. WLF was the only public interest organization to file comments in opposition to the Commercial Alert proposal.

Greater New Orleans Broadcasting Ass'n v. United States. On June 14, 1999, the U.S. Supreme Court struck down a federal law prohibiting broadcast advertising within Louisiana for gambling casinos that legally operated within the State. The decision was a victory for WLF, which filed a brief urging that the law be struck down. The Court agreed with WLF that the advertising ban served no significant government interest, in light of the fact that casino gambling is legal in all areas where the plaintiffs were seeking to run advertisements. The Court held that the First Amendment virtually never permits a ban on non-misleading advertising for a lawful activity.

44 Liquormart, Inc. v. Rhode Island. On May 13, 1996, the U.S. Supreme Court unanimously struck down Rhode Island's ban on retailer advertising of alcoholic beverage prices as a violation of the First Amendment. The decision was a victory for WLF, which had filed a brief urging the Court to overturn the ban. The Court agreed with WLF that only rarely can truthful commercial speech be banned. The Court held that Rhode Island failed to demonstrate that a ban on truthful price information served any important state interest.

Jakanna Woodworks, Inc. v. Montgomery County. On February 14, 1997, the Maryland Court of Appeals (Maryland's highest court) unanimously struck down on First Amendment grounds a county ordinance that required merchants to obtain a license before advertising a "closing-out" sale. The decision was a victory for WLF, which had filed a brief in the case arguing that the license requirement imposed an unwarranted burden on commercial speech rights. The court agreed with WLF that the ordinance was unconstitutional as applied to truthful advertising; the court held that the county's interest in preventing deceptive advertising could be protected without requiring businesses to get licenses before being allowed to advertise.

Opposing Regulation of Internet. On November 10, 2001, FDA responded to an April 12, 2001 WLF Citizen Petition urging the agency to adopt a rule or policy explaining that health claims and other consumer information that appear on a company's website do not constitute "labeling" of that company's product, and thus are not subject to FDA's stringent and detailed food and drug

labeling requirements. Rather, any such promotional information should be regarded, at best, as advertising, and thus subject in certain circumstances to review by the Federal Trade Commission (FTC) under its "false and misleading" advertising standard. The FTC standard is more consistent with First Amendment protections of commercial speech than FDA labeling requirements. WLF's filing was prompted by an alarming FDA Warning Letter sent to Ocean Spray Cranberries, Inc. on January 19, 2001, the final day of the Clinton Administration. FDA claimed that Ocean Spray's cranberry and grapefruit juices were "misbranded" and subject to seizure simply because of certain health claims and other information that appeared on the company's website and related links. In its response to WLF's petition, FDA indicated that it would not be issuing an across-the-board regulation at this time, but that it would not generally regard a company's website content as labeling if the company does not sell products online.

Petition Regarding Disclosure of Clinical Trial Results. On December 28, 1995, WLF filed a joint petition for rulemaking with FDA and the Securities and Exchange Commission (SEC), urging FDA to exempt from FDA regulation the public disclosure of clinical test results of Investigational New Drugs (INDs). Such information is required by SEC rules to be disclosed to the investment community. Current FDA rules and policies prohibit drug companies from "promoting" or "commercializing" an IND until the drug obtains final approval. Yet the SEC requires that drug companies file reports with that agency and inform the investment community of major product developments. FDA has interpreted its rule against "promoting" an IND to include press releases and other communications made by companies regarding the results of clinical tests of INDs. FDA has not taken any decisive action on this issue, and WLF continues to press for relaxation of speech restrictions in this area. WLF argues that investors need to receive truthful information about drugs in "the pipeline" if they are to measure accurately the value of a pharmaceutical company's stock.

Citizen Petition on Pharmacy Compounding. On March 6, 1992, WLF filed a Citizen Petition with FDA, alleging that the agency's efforts to control advertising by pharmacies regarding their drug compounding capabilities violated the First Amendment, and urging the agency to utilize notice-and-comment rulemaking before adopting new regulations on that subject. FDA failed to heed WLF's warnings, resulting in the U.S. Supreme Court's 2002 decision in *Thompson v. Western States*, which found that FDA's efforts to regulate advertising regarding pharmacy compounding of drugs violated the First Amendment.

FDA Draft Guidance on Medical Product Promotion. On April 6, 1998, WLF filed comments expressing its deep reservations regarding FDA's Draft Guidance regarding "medical product promotion by health care organizations or pharmacy benefits management companies." WLF argued that FDA failed to demonstrate any need for the guidance and that it would have an adverse impact on health care. WLF also argued that FDA lacked statutory authority to issue the guidance and that it infringed the First Amendment rights of drug companies, doctors, and consumers. WLF requested that FDA withdraw the Draft Guidance and not issue it in final form. In light of intense opposition, FDA placed the proposal on hold in July 1998 and has taken no further action.

Opposing Proposed Controls on Tobacco Advertising. On September 24, 2003, WLF submitted to U.S. Senator Jeff Sessions its analysis of proposed legislation that would impose severe federal controls on tobacco advertising and marketing. WLF completed the analysis at Senator Sessions's request. WLF concluded that the bill violates the First Amendment because it would prohibit vast amounts of truthful advertising, yet it is not narrowly tailored to achieve its stated goals – reduction of tobacco use by youth and adults. The bill would write into law 1995 FDA tobacco restrictions that were never enforced because the courts determined that FDA was not authorized to issue them. WLF noted that a 2001 Supreme Court decision that struck down Massachusetts tobacco advertising restrictions on First Amendment grounds made clear that many provisions in the 1995 FDA regulations – provisions that are incorporated into the pending legislation – are unconstitutional. WLF was particularly critical of provisions in the proposed legislation that would greatly restrict any comparative health claims by tobacco manufacturers. WLF argued that the First Amendment bars restrictions on such claims as long as manufacturers can demonstrate that the claims are truthful.

Opposing Restrictions on Alcohol Advertisements. WLF filed a petition with the FCC in October 1996, urging it not to take any action limiting the advertising of distilled spirits on television. WLF argued that the Supreme Court's recent decisions in this area made it absolutely clear that restrictions on truthful commercial speech are rarely, if ever, an effective or appropriate way for the government to achieve a public policy goal. WLF argued that this strict standard cannot be met with respect to liquor ads. There is little or no evidence that prohibiting television advertising of liquor will have a significant effect on underage drinking. Moreover, any restriction on the advertising of distilled liquor would primarily affect adults and would be far broader than necessary to reduce underage drinking. WLF made clear that the legitimate problem of underage drinking should be attacked through greater enforcement of existing laws, not through restrictions on the free speech rights of adults. Although FCC Chairman Reed Hundt had been advocating new limitations on television advertising, the FCC dropped the matter in June 1997 by voting not to issue a Notice of Inquiry regarding alcohol advertising.

Relaxing Restrictions on Speech about Securities. On December 20, 1995, WLF filed a petition for rulemaking with the Securities and Exchange Commission (SEC), asking the agency to revise its rules on the contents of securities prospectuses and advertisements to allow any truthful and nonmisleading information to be included. The permissible contents of an advertisement or prospectus within the SEC's jurisdiction are limited to certain information enumerated by statute and regulation. WLF argued that present regulations are inordinately restrictive and violate the First Amendment. WLF argued that although the SEC can compel disclosures in advertising and prospectuses to protect the public from fraud and abuse, it should not impose limitations on advertising content and on the content of prospectuses except to require that all information be truthful and nondeceptive.

B. Product Labeling

Some bureaucrats argue that consumer decisions (particularly decisions related to food

consumption and health care) should be dictated by government officials because, they claim, most consumers cannot begin to understand the issues involved. Such paternalism is particularly prevalent with respect to the information that manufacturers are permitted to place on their product labels; bureaucrats regularly adopt rules that tightly restrict the information that may be included on a label, without regard to its truthfulness. WLF takes the opposite approach; it believes that providing consumers with access to accurate information vastly improves the quality of their choices, and including that information on a product label is often the best way to ensure that consumers have access to it. Accordingly, WLF has worked tirelessly over the past decade – both in the courts and before administrative agencies – to eliminate overly strict rules governing product labeling.

Rubin v. Coors Brewing Co. On April 19, 1995, WLF scored a decisive free-speech victory in the U.S. Supreme Court when the Court struck down a federal law that prohibited beer manufacturers from including the alcoholic content of their products on their labels. WLF's brief challenging the law was written with the assistance of former U.S. Solicitor General Charles Fried. The Court agreed with WLF that the First Amendment does not permit the government to bar inclusion of truthful information on product labels merely because it believes that some consumers might abuse that information. The Court held that denying consumers truthful information about a product whose sale is wholly lawful serves no legitimate government interest.

Legal Advice Regarding National Uniformity for Food Act. On November 29, 2005, at the request of U.S. Representative Edolphus Towns, WLF attorneys provided him with legal counsel regarding the propriety of the proposed National Uniformity for Food Act of 2005 ("NUFA"), which would require national uniformity in food safety and warning requirements. The bill would achieve uniformity by preventing States from imposing their own food labeling requirements once the federal government has established labeling requirements for a particular type of product. WLF's legal memorandum concluded that Congress would be acting appropriately were it to adopt the legislation. WLF concluded that NUFA is consistent with the federal government's traditional role in the regulation of interstate commerce and an appropriate response to the disruptions in interstate commerce caused by California's Proposition 65. WLF praised NUFA as "a carefully designed effort to balance the respective roles of the federal and State governments in food safety issues." WLF said that NUFA would have a significant impact only in those few States – such as California – in which excessive imposition of food warning requirements is having a negative effect on interstate commerce.

Alcohol Labeling Restrictions. On September 26, 2005, WLF filed formal comments with the Alcohol and Tobacco Tax and Trade Bureau (TTB) requesting that TTB revoke its ban on truthful alcohol labeling that would disclose basic "Serving Facts" information to consumers. WLF argued that consumers benefit when alcoholic beverage labeling lists the serving size, the number of servings per container, and the amount of alcohol per serving. WLF argued that such labeling is in the public interest, is truthful and not misleading, and is protected against unwarranted government regulations by the First Amendment. WLF argued that TTB is acting illogically by permitting manufacturers to convey this type of information in their advertisements but preventing the same information from being displayed on containers of beer, wine, or distilled spirits.

Association of National Advertisers v. Lungren. Manufacturers often seek to include on product labels information indicating that their products do not cause environmental harm. Some state and local governments have sought to restrict (or even ban) such labeling without regard to truthfulness. WLF has regularly gone to court to oppose such restrictions on First Amendment grounds. For example, California has a law that prohibits a manufacturer from labeling its product “recyclable” in most instances, regardless whether the product is, in fact, recyclable. After WLF’s challenge to the law proved unsuccessful in the lower courts, WLF asked the U.S. Supreme Court to hear the case. WLF argued that the restrictions on truthful labeling regarding environmental issues violated the First Amendment. On October 2, 1995, the Supreme Court declined to hear the case.

“Lean” Labeling. On February 8, 2006, WLF filed comments with FDA supporting the agency’s proposal to expand the allowable nutrition information of certain small-package foods so that manufacturers can label those foods with the word “lean.” WLF argued that the proposed change would assist consumers by providing them with accurate and relevant information and would also expand the market for lean foods.

Opposing Warning Labels on Soft Drinks. On December 16, 2005, WLF submitted comments to FDA, urging FDA to reject a petition filed by the Center for Science in the Public Interest (CSPI), a Washington-based consumer activist group. The petition would require labels on non-diet soft drinks to bear a warning that “drinking too much soft drinks may contribute to weight gain.” WLF argued that such warning labels are unwarranted because labels on all beverages currently provide caloric content, sugar content, and other nutritional information to help consumers make informed choices. WLF argued that it is well known to all consumers that maintaining a healthy diet requires avoiding over-consumption of food containing sugar and fat; WLF argued that the First Amendment protects manufacturers from being forced to display warning statements under such circumstances. WLF also cited studies indicating that lack of exercise plays a far greater role in juvenile obesity than does overconsumption of sugar and fat.

Proposed Labeling for Flavored Malt Beverages. On October 21, 2003, WLF filed comments with the Alcohol and Tobacco Tax and Trade Bureau (a branch of the U.S. Treasury Department), opposing proposed regulations that would impose excessive and unjustified restrictions on truthful labeling and advertising by brewers of flavored malt beverages. The proposed regulations would ban a range of legitimate, non-misleading statements that brewers might wish to make about their products’ taste, aroma, production process, flavoring, and the like. For example, it would prohibit brewers from truthfully informing consumers that a particular beer was aged in bourbon barrels. Citing the *Coors* decision (see above), WLF noted that the Supreme Court has specifically held that information on beer labels is commercial speech protected by the First Amendment and that the government must look to less restrictive alternatives before banning truthful statements.

Proposal Regarding Trans Fatty Acid Nutrition Labeling. On March 27, 2003, WLF filed comments with FDA, objecting to FDA’s proposal to require all food containing trans fatty acids (trans fat) to include on its label the following statement: “Intake of trans fat should be as low as

possible.” WLF argued that requiring that statement would violate the First Amendment protection against compelled speech. WLF argued that while the First Amendment permits the government to compel commercial speech when necessary to prevent consumers from being confused or deceived, there is no serious argument that the proposed statement is necessary to prevent food labels from being confusing or deceptive. WLF stated that FDA may do no more than mandate disclosure of the quantity of trans fat contained in each serving of the food being sold. While the proposed statement might contain sound health information, it might also unnecessarily alarm consumers; and WLF argued that it is not the role of the government to commandeer the property of others for the purpose of spreading information that may promote public health. In a victory for WLF, FDA announced on July 11, 2003 that it would not require food labels to include the controversial statement.

FDA Proposals to Regulate Food Labeling. WLF has long been at the forefront of efforts to ease FDA regulation of food labeling. For example, in a series of submissions to FDA in the early 1990s, WLF urged FDA to lift the ban on health-related information and certain types of pictures on food labels. The ban on health-related information eventually was lifted by Congress, and WLF has continuously worked to ensure that the new legislation is being fairly administered.

Draft Compliance Policy Guide on Labeling. On July 23, 1999, WLF filed comments with FDA, opposing its efforts to expand the definition of “labeling” under federal food and drug law. Under FDA’s proposed definition, “labeling” of a drug would have included books and other publications that merely discuss a particular drug, even though that material does not “accompany” the drug as that term is commonly understood and as Congress intended. FDA ultimately abandoned its effort to expand the definition of what constitutes “labeling” of a drug or medical device.

Labeling of Genetically Engineered Products. On March 19, 2001, WLF filed comments with FDA, generally supporting the agency’s proposed guidelines for the labeling of food with respect to whether it has been developed using biotechnology. WLF strongly supported FDA’s tentative decision to continue its policy against mandatory labeling on the subject; WLF noted that such labeling does not provide any nutritionally meaningful information. WLF asserted, however, that industry should be afforded broad leeway when it comes to *voluntary* labeling with regard to bioengineering, because any effort to significantly restrict industry choice would raise major First Amendment issues. WLF asserted that the one area in which FDA restrictions are warranted is the area of health claims; WLF argued that labeling should not be permitted if it suggests that the labeled food is safer based on the presence or absence of genetically engineered ingredients — because there is no sound scientific basis for such claims. FDA ultimately adopted guidelines that closely tracked WLF’s suggestions.

Comments on Labeling of “Alcopops.” On July 23, 2001, WLF filed comments with the Bureau of Alcohol, Tobacco, and Firearms, expressing strong opposition to a request from the Center for Science in the Public Interest (CSPI) that BATF revoke existing labels for sweet-tasting malt-based alcoholic beverages (referred to by CSPI as “alcopops”). WLF argued that CSPI failed to identify any portion of such labeling that is in any way misleading to consumers or is otherwise in violation of BATF regulations. WLF also argued that any effort to prohibit “alcopop” manufacturers

from disseminating non-misleading product labeling would violate their First Amendment rights to engage in truthful commercial speech.

C. Outdoor Advertising

State and local governments continue to impose unwarranted restrictions on billboards and other types of outdoor advertising. Sometimes these restrictions are based on an antipathy to all types of outdoor signs; WLF believes that while governments should be permitted to impose reasonable zoning restrictions on signage, many of these restrictions go much too far and significantly interfere with individuals' ability to exercise their First Amendment rights on their own property. On other occasions, the restrictions prohibit only certain types of signs, based on their content. WLF has repeatedly gone to court to oppose such content-based speech restrictions. The Supreme Court's *Lorillard* decision, in which WLF won a resounding First Amendment victory, may have put such content-based restrictions to rest for the immediate future.

Lorillard Tobacco Co. v. Reilly. On June 28, 2001, the U.S. Supreme Court overturned Massachusetts regulations that banned outdoor advertising of tobacco products while imposing virtually no restrictions on other products' advertising. The decision was a victory for WLF, which had filed a brief arguing that the regulations were unconstitutional. The Supreme Court agreed with WLF that the regulations could not be upheld in the face of a First Amendment challenge, as a measure reasonably designed to reduce underage smoking. The Court held that states could achieve that same objective by stepping up enforcement against merchants who violate the ban on sales to minors without interfering with speech. The Court also agreed with WLF that the Massachusetts regulations were preempted by a federal statute that severely limits states' power to regulate cigarette advertising.

Federation of Advertising Industry Representatives v. Chicago. On October 6, 2003, the U.S. Supreme Court without comment denied WLF's petition for review in this commercial speech case. WLF's July 2003 petition had urged the Court to reinstate a challenge to commercial speech restrictions imposed by the City of Chicago. WLF represented a group of advertisers that had been fighting in federal court since 1997 against a Chicago ordinance that prohibited outdoor advertising of alcoholic beverages. In April 2003, a federal appeals court dismissed the case as moot simply because Chicago repealed the ordinance after it became apparent that WLF would win the case. In its petition asking the Supreme Court to review that decision, WLF argued that a suit is never rendered moot simply because a defendant voluntarily ceases its objectionable conduct, except in very rare cases when it is absolutely clear that the conduct will not recur. WLF argued that to dismiss a suit as moot under these circumstances would leave a government free to re-impose its speech restrictions at any time.

City of Ladue v. Gilleo. On June 13, 1994, the U.S. Supreme Court unanimously struck down a city ordinance that prohibited homeowners from placing virtually all types of signs on their property. The Court's decision was a victory for WLF, which filed a brief arguing that the First Amendment protects the right of homeowners to express themselves by posting signs. WLF argued

that the First Amendment prohibits a municipality from deciding which signs are acceptable and which are not, based solely on their content.

Lindsey v. Tacoma-Pierce County Health Department. On November 19, 1999, the U.S. Court of Appeals for the Ninth Circuit handed WLF a major victory in this important commercial speech rights case. The appeals court struck down a Tacoma, Washington ordinance that banned outdoor advertising of tobacco products while imposing virtually no restrictions on other products' advertising. The court agreed with WLF's argument that when Congress adopted the Federal Cigarette Labeling and Advertising Act, it intended to prohibit any attempts by state and local governments to regulate cigarette advertising. WLF had also argued that the First Amendment prohibits government from deciding what advertising is acceptable based solely on the message conveyed by the advertisement. WLF argued that Tacoma's ostensible purpose in adopting the ordinance — to reduce underage smoking — could be achieved without infringing on speech rights if Tacoma intensified efforts to enforce the ban on sales to minors.

Greater New York Metropolitan Food Council v. Giuliani. On April 17, 2000, the U.S. Supreme Court issued an order declining to review this critical commercial speech case. WLF had filed a brief in the Court, urging it to hear a challenge to a New York City ordinance that banned virtually all outdoor advertising of tobacco products. The U.S. Court of Appeals for the Second Circuit had upheld the ordinance, holding (contrary to WLF's arguments) that the ordinance was not preempted by the Federal Cigarette Labeling and Advertising Act (FCLAA), which bars state and local government regulation of cigarette advertising that is "based on smoking and health." While the parties awaited a Supreme Court decision on whether to review the Second Circuit's FCLAA ruling, the plaintiffs pressed ahead in the district court with an alternative argument that the advertising ban violated their First Amendment rights. Adopting arguments raised by WLF regarding the First Amendment issue, the district court in January 2000 issued a preliminary injunction against enforcement of the ordinance. New York dropped its appeal from that decision after the Supreme Court issued its decision in the *Lorillard* case (see above).

Anheuser-Busch v. Baltimore. On April 28, 1997, the U.S. Supreme Court denied WLF's request to hear this commercial speech case, bringing to an end a challenge to Baltimore's stringent restrictions on billboards advertising liquor products. The case went up and down the federal courts several times, with WLF filing briefs opposing the billboard restrictions at every level of the judiciary. WLF scored a victory in 1996, when the Supreme Court vacated an appeals court decision upholding the ban, and remanded the case to the appeals court for reconsideration. The court of appeals, however, again upheld the speech restrictions; the Supreme Court declined to review that second decision. In its four briefs filed in the case, WLF argued that the plaintiffs should have been given the opportunity to present evidence that Baltimore's ordinance had no effect on underage drinking. Baltimore was later obliged to repeal its ordinance, following the Supreme Court's *Lorillard* decision (see above).

Penn Advertising of Baltimore, Inc. v. Baltimore. The U.S. Supreme Court on April 28, 1997 declined WLF's invitation to hear this case, which challenged Baltimore's near-total ban on

billboards advertising tobacco products. In November 1996, the U.S. Court of Appeals for the Fourth Circuit upheld the ban. The 2-1 decision was a setback for WLF, which filed several briefs urging the Fourth Circuit to strike down the ordinance on First Amendment grounds. Baltimore was later obliged to repeal its tobacco ordinance, following the Supreme Court's *Lorillard* decision (see above).

D. Government Enforcement Actions Against Commercial Speakers

When a government agency goes to court to bring an enforcement action against companies based on statements they have made (or on their failure to include the government's preferred warnings along with their statements), WLF has joined the fray in opposing sanctions against entities that have done nothing more than speak the truth.

California v. R.J. Reynolds Tobacco Co. On June 9, 2004, the California Supreme Court declined to review a lower court decision that imposed significant sanctions on a company for engaging in nonmisleading commercial speech. The decision was a setback for WLF, which filed a brief urging the Court to grant review. WLF argued that the First Amendment protects a company's right to engage in such advertising and that tobacco companies have never agreed to waive such rights. California sued R.J. Reynolds Tobacco Co. for allegedly "targeting" youth with its advertising, based on evidence that Reynolds places advertising in magazines (such as *Sports Illustrated*) with up to 25% youth readership. WLF argued that Reynolds may not be sanctioned for its advertising in the absence of evidence that it purposely intended to target youth; mere knowledge that a youth would see its ads is not sufficient to sanction non-misleading speech.

Trans Union LLC v. Federal Trade Comm'n. On June 10, 2002, the U.S. Supreme Court declined to review a lower-court decision that denied full First Amendment protection to truthful speech deemed by the court not to "relate to matters of public concern." In its brief urging review, WLF argued that all truthful, noncommercial speech should be entitled to full First Amendment protection, and that a court should not get into the business of determining which speech involves topics that are insufficiently weighty and thus are less worthy of protection. In this case, the lower court upheld an FTC order prohibiting companies from transmitting truthful, noncommercial lists of names and addresses of consumers, and imposing sanctions on a company that had done so. WLF argued that the decision was inconsistent with numerous Supreme Court First Amendment decisions.

Word-of-Mouth Marketing. On February 2, 2006, WLF filed with the FTC a response in opposition to a petition seeking an investigation of word-of-mouth, or "buzz," marketing programs. The petition had been filed by Commercial Alert, an activist group co-founded by Ralph Nader. Commercial Alert claimed in its petition that programs inviting consumers (without compensation) to tell their peers about new products are deceptive if the consumers do not also disclose that they are participating in a marketing program. WLF argued in its response that such communications are not deceptive and that there is no basis for requiring the disclosures sought by Commercial Alert.

Novartis Corp. v. Federal Trade Commission. On August 18, 2000, the U.S. Court of

Appeals for the D.C. Circuit upheld a Federal Trade Commission (FTC) order requiring Novartis Corp., a pharmaceutical company, to include a government-dictated message in its advertising. The court ruled that the First Amendment posed no bar to the FTC's so-called corrective advertising order. The decision was a setback for WLF, which had filed a brief urging the court to set aside the FTC's order. The case involved an order from the FTC – which had determined that Novartis's advertisements for Doan's Pills had been misleading in suggesting that Doan's offers more effective relief for back pain than other pain relievers – directing Novartis to include the following statement in all Doan's advertising: “*Although Doan's is an effective pain reliever, there is no evidence that Doan's is more effective than other pain relievers for back pain.*” In its brief, WLF argued that the FTC's corrective advertising order violated Novartis's right to remain silent. WLF said that the FTC order was particularly troublesome because it resulted in Novartis refraining from advertising at all rather than conveying the FTC's “corrective” message.

Defending Corporate Speech on Food Irradiation. On August 7, 2003, WLF filed comments with the Federal Trade Commission, objecting to efforts by activists to censure speech about food irradiation. Two activist groups, Public Citizen and the Center for Food Safety, petitioned the FTC to take enforcement action against Giant Food based on statements Giant made regarding the irradiation of its food products. Giant issued a pamphlet that, in an effort to add to consumers' understanding of irradiation, compared the irradiation process to milk pasteurization. The activist groups asserted that the law prohibits food sellers from representing irradiated food as “pasteurized.” WLF countered that the comparison of irradiation and pasteurization is not misleading and assists American consumers in understanding that irradiation is a process designed to enhance food safety and cleanliness. WLF argued that the First Amendment protects Giant's right to make truthful statements regarding the irradiation process.

PCRM Petition Regarding “Milk Mustache” Advertisements. On March 13, 2000, WLF filed comments with the FTC, opposing a petition filed by the Physicians Committee for Responsible Medicine (PCRM), which charged that the famous “Milk Mustache” advertisements are false or misleading. The PCRM argued that the advertisements are misleading because they provide consumers with the allegedly false impression that milk consumption is good for everyone's health. WLF argued that the First Amendment protected the Milk Mustache ads from any government control. WLF argued that there is not only an overwhelming consensus in the medical community that milk consumption promotes good health among everyone except those with specific allergies, but also that the FTC and the courts have no authority to second-guess Congress's determination that milk consumption should be promoted. The FTC ultimately decided not to address the petition.

CSPI Petition Regarding Olestra Advertisements. On September 28, 1998, WLF filed comments with the FTC, urging the agency to reject “false advertising” claims raised by a self-appointed consumer watchdog group. The Center for Science in the Public Interest (CSPI) has been waging a quixotic campaign for years in an effort to prevent marketing of Olestra, a fat substitute used in potato chips and other snacks. The Food and Drug Administration rejected CSPI's claims that Olestra is not safe for human consumption, so CSPI then brought its campaign to the FTC arguing that advertising claims that Olestra is safe are false. In its comments, WLF argued that

advertisements being run by makers of chips containing Olestra have been accurate. WLF argued that CSPI's hysterical campaign is merely an attempt to scare consumers away from Olestra-containing products. It also noted that health experts (as well as CSPI) have been stressing for years that Americans need to reduce fat consumption, and that substituting Olestra-containing chips for regular snack foods (which invariably are high in saturated fats) is one effective way to improve overall nutrition. The FTC subsequently adopted WLF's position and rejected CSPI's petition. In late 2005, CSPI announced that it plans to sue manufacturers of products containing Olestra, asserting that manufacturers include inadequate warnings on their labels. WLF intends to participate in that litigation, in opposition to CSPI.

Action Against Alcoholic Beverage Advertisers. On October 13, 1998, WLF filed comments with the FTC, urging it to reconsider proposed consent agreements against two companies regarding the advertising of their products. The FTC claimed that an advertisement for Beck's Beer was false and deceptive merely because it pictured actors standing on a sailboat and holding the product. The FTC claimed that such advertisements convey the false image that it is safe to drink beer while boating, and that viewers would do the same. The FTC also objected to an advertisement claiming that the Kahlua White Russian pre-mixed cocktail was "low alcohol" because beer has less alcohol. WLF argued that the advertisements were not false or misleading and that the FTC's interpretation of its authority was mistaken.

Kraft, Inc. v. Federal Trade Comm'n. On February 22, 1993, the U.S. Supreme Court denied review in this case involving suppression of Kraft's television and print advertisements by the FTC. The FTC contended that certain advertisements for "Kraft Singles" constituted false advertisement by implying untrue claims. The Supreme Court's decision was a setback for WLF, which filed a brief urging the Court to hear the case. WLF argued that federal agencies should not be permitted to censor an advertisement where, as in this case, every claim in the ad is literally true and the FTC has conducted no studies to substantiate its assertion that some consumers might nonetheless be misled by those truthful claims. WLF argued that the First Amendment does not permit the government to restrict advertisements without some substantial basis for asserting that the ads are misleading.

Peel v. Attorney Registration and Disciplinary Comm'n. On June 4, 1990, the U.S. Supreme Court ruled that the First Amendment bars states from prohibiting lawyers from publicizing their certification as "specialists" by bona fide private organizations. The decision was a victory for WLF, which filed a brief in the case in support of an Illinois lawyer who was sanctioned by state authorities for listing on his letterhead the truthful statement that he had been certified as a civil trial specialist. The Court agreed with WLF that the First Amendment protects the right of professionals to make truthful statements about their qualifications.

E. Private Tort Actions Against Commercial Speakers

It is not just government agencies that bring enforcement actions against companies based on what they say or do not say. Such actions also take the form of tort actions filed by private

parties. WLF has been particularly vigilant in opposing lawsuits by private parties who do not claim to have been hurt by the speech; they sue simply because they do not like what the company has said. For example, WLF has also gone to court in an effort to curb abuse of state statutes (e.g., California's 17200 "unfair competition" statute) that allow trial lawyers and other uninjured individuals to seek court sanctions against commercial speakers by purporting to act on behalf of the state government.

Doe v. Wal-Mart Stores, Inc. On May 5, 2006, WLF filed a brief in U.S. District Court in Los Angeles, urging the Court to dismiss a lawsuit brought against Wal-Mart by activists who are critical of Wal-Mart's overseas labor practices. In response to such criticisms, Wal-Mart issued statements denying that it purchases products manufactured overseas under "sweat shop" conditions. The activists responded by filing suit against Wal-Mart under California's infamous 17200 "unfair competition" law, claiming that Wal-Mart's denials are false and constitute unfair competition. WLF's brief urged dismissal on the ground that the First Amendment fully protects Wal-Mart's right to speak out on issues of public importance, such as international labor conditions. WLF also urged dismissal of the plaintiffs' claims that overseas labor practices used by Wal-Mart's suppliers violate international human rights laws because they constitute "slavery."

Nike, Inc. v. Kasky. On June 26, 2003, the U.S. Supreme Court declined review of a California Supreme Court decision threatening to impose severe restrictions on the right of corporations to speak freely on matters of public importance — including manufacturers seeking to respond to critics of their overseas labor practices. In January 2003, the Court agreed to review the case but five months later changed its mind and dismissed as "improvidently granted" its original order granting review. In two separate briefs filed in the case, WLF argued that the California court effectively held that *all* corporate speech — even speech on matters of great public importance — is entitled to reduced levels of First Amendment protection. WLF argued that the decision is contrary to a long line of Supreme Court decisions and threatens to chill significant amounts of speech by corporations.

Baxter International Inc. v. Asher. On March 21, 2005, the U.S. Supreme Court issued an order declining to review (and ultimately overturn) an appeals court decision that eviscerates a 1996 federal law intended to limit the liability of corporations that make projections ("forward-looking statements") regarding future sales and earnings. The decision was a setback for WLF, which had filed a brief urging the court to review (and ultimately overturn) the appeals court decision. The 1996 law creates a "safe harbor" for forward-looking statements; provided such statements are accompanied by "meaningful" cautions, the safe harbor mandates that the statements cannot be used to hold a publicly held corporation liable to its shareholders for subsequent drops in stock prices, regardless how inaccurate the statements turn out to be. The appeals court interpreted the safe harbor so narrowly that it provides virtually no protection to corporations. WLF argued that Congress intended to provide broad protection for forward-looking statements in order to encourage companies to provide such information. WLF is looking for other cases raising the same issue, with a goal of bringing the issue to the Supreme Court's attention once again.

In re Tobacco Cases II. On September 14, 2005, WLF filed a brief in the California

Supreme Court, urging the court to uphold the dismissal of tort claims filed against tobacco companies for having run truthful advertising that allegedly overglamorized smoking. WLF argued that such claims are barred both by the First Amendment and by federal law – regardless of the plaintiffs’ claim that glamorous advertisements induce minors to buy cigarettes in violation of California law. WLF argued that cigarette advertising is already heavily regulated at the federal level (by the Federal Cigarette Labeling and Advertising Act and by oversight conducted by the Federal Trade Commission), and at the State level by State regulators (by virtue of the Master Settlement Agreement entered into between tobacco companies and State attorneys general). WLF argued that there is no reason to permit an additional level of advertising regulation, in the form of tort suits filed under State law. WLF also noted that the plaintiffs seeking recovery are all admitted lawbreakers (they purchased cigarettes while under age 18) and argued that they should not be rewarded for their misconduct.

Physicians Comm. for Responsible Medicine v. General Mills . On September 2, 2005, WLF filed a brief in the U.S. District Court for the Eastern District of Virginia, urging the court to dismiss a lawsuit by animal rights activists who are seeking to stop advertisements being run by the milk industry. WLF argued that the suit threatens to undermine manufacturers’ commercial speech rights. WLF argued that if a manufacturer can be subjected to expensive lawsuits filed by activists who do not like statements the manufacturer makes on issues of public importance, then significant amounts of truthful speech will be chilled as manufacturers become increasingly unwilling to comment on such issues. The suit targets a recent milk industry advertising campaign that advocates increased consumption of dairy products as a method of losing weight. The Physicians Committee for Responsible Medicine (PCRM) challenges the validity of the scientific studies that form the basis for the industry’s advertising. PCRM argues that the weight-loss claim is false and violates Virginia’s consumer protection and false advertising laws. Their principal request is that the court issue an injunction against any further promotion of the weight-loss claims. WLF argued that Virginia law does not permit individuals to obtain injunctions against speech. WLF also argued that such suits raise serious First Amendment issues because of their potential to chill truthful speech on issues of public importance, such as whether increases in consumption of dairy products are good for one’s health.

Philip Morris USA v. Boeken. On March 20, 2006, the U.S. Supreme Court declined to review a California court decision that imposed a massive liability award against the manufacturer of a “light” cigarette on the ground that the public believes that “light” cigarettes pose less of a health risk than they actually do. The order, issued without comment, was a setback for WLF, which filed a brief urging the Court to review the case. WLF argued that such tort claims are preempted by federal law because cigarette manufacturers already display all the health and safety warnings mandated by the federal government. WLF argued that Congress determined, when it adopted the Federal Cigarette Labeling and Advertising Act, the health warnings that manufacturers must include in advertising and on their labeling. WLF argued that states should not be permitted to second-guess that congressional determination by allowing tort suits that would require manufacturers to impose additional warning requirements. WLF argued that Congress has passed a series of laws designed to allow companies in a wide variety of industries to advertise nationwide by imposing a uniform

advertising standard and barring States from adopting conflicting standards. WLF argued that the California court decision could have the effect of undermining all such laws.

Metro-Goldwyn-Mayer Studios v. Grokster. On June 27, 2005, the U.S. Supreme Court issued a decision that provided appropriate protection for copyrights without unduly interfering with commercial speech rights or otherwise interfering with computer software development. The Court held that a company whose file-sharing software allows others to illegally copy and disseminate copyrighted music and films on the Internet also itself violates the copyright law. The decision addressed several important and previously undecided copyright issues. WLF had filed a brief in November 2004, urging the Court to address those issues. Copyright laws protect owners of the copyrighted work from having their music or films downloaded without paying the owner a royalty fee. Grokster software enabled computer users to share music and film files between each other utilizing so-called “peer-to-peer services,” usually violating the copyright laws. Consequently, major motion picture studios and record companies sued Grokster on the theory that it was guilty of contributory infringement. The Court ruled against Grokster, but in a manner unlikely to infringe speech rights or to inhibit development of innovative software products.

National Cable & Telecomm. Ass’n v. Brand X Internet Services. On June 27, 2005, the U.S. Supreme Court ruled that the Federal Communications Commission (FCC) could properly decide not to infringe the speech rights of cable and DSL companies by imposing burdensome regulatory requirements on the delivery of broadband Internet access. The decision was a victory for WLF, which filed a brief with the Court supporting the FCC’s position. The case arose from a decision by the FCC to treat cable modem service as an “information service” rather than a “telecommunications service.” The decision meant that cable modem providers (local cable television providers) would not be required to share their lines with other providers of Internet. The Supreme Court agreed with WLF that the FCC’s decision was sound policy because intense competition in the broadband market – among cable companies, local telephone companies (which provide DSL service), and companies in the process of developing new technologies for broadband service – ensures that consumers will be well served without the need for exacting FCC regulation of what these companies do and say.

F. Discriminatory Treatment of Commercial Speakers

Often, governments discriminate against commercial speakers by treating differently two speakers who act and speak in an identical manner, based solely on that fact that one speaker is speaking in a commercial context and one is not. WLF views such discrimination as a blatant violation of the First Amendment and has regularly gone to court to ensure that commercial speakers are not treated as second-class citizens.

Petition Regarding Restrictions on Speech About Part D Plans. On April 4, 2006, WLF petitioned the federal Centers for Medicare and Medicaid Services (CMS) to lift restrictions on commercial speech imposed by CMS’s marketing guidelines for carriers offering Medicare prescription drug benefit plans. The guidelines prohibit carriers from making truthful and non-

misleading statements comparing their plans to other plans. WLF's petition asserted that the speech restrictions are beyond the scope of CMS's authorizing regulations and violate the First Amendment rights of carriers and consumers.

Los Angeles Police Dep't v. United Reporting Publishing Corp. On December 7, 1999, the U.S. Supreme Court refused to overturn a California law that permits localities to withhold from the public at large (including commercial users) the names and addresses of those arrested, while simultaneously releasing that information to select noncommercial groups. The 7-2 decision was a setback for WLF, which had filed a brief urging that the statute be struck down. In its brief, WLF had argued that the Los Angeles Police Department was violating the First Amendment by favoring noncommercial users over commercial users. The Court said that the plaintiffs could not bring a *facial* First Amendment challenge to the law (that is, a suit asserting that the law is unconstitutional in all possible situations) because they were not being prohibited from conveying information in their possession; rather, their only complaint was that they were being denied access to government information. But the Court said that on remand the plaintiffs (commercial users of the names) could argue that the statute is unconstitutional as applied to them in particular, because it treats them less favorably than it treats other groups (such as newspapers) seeking the arrestee information.

City of Cincinnati v. Discovery Network. On March 24, 1993, the U.S. Supreme Court struck down a Cincinnati ordinance prohibiting the distribution of commercial publications (such as real estate listings) by means of news racks placed on city streets, while simultaneously allowing newsrack distribution of general-circulation newspapers. The decision was a victory for WLF, which filed a brief urging that the ordinance be struck down on First Amendment grounds. WLF argued that the First Amendment prohibits such government content-based discrimination against commercial speakers, particularly where (as in this case) the potential harm created by news rack distribution of commercial circulars (litter on the streets) is no greater than the harm created by news rack distribution of general-circulation newspapers.

Austin v. Michigan State Chamber of Commerce. On March 27, 1990, the U.S. Supreme Court held that the First Amendment does not protect the right of corporations to make independent political expenditures in support of a candidate for public office — even though individuals *do* have a constitutional right to make such expenditures. The decision was a setback for WLF, which filed a brief urging the Court to strike down a Michigan law prohibiting such corporate expenditures. WLF argued that there is no reason to afford corporations less protection than individuals under the First Amendment. WLF argued that the danger of corruption is no greater when the independent expenditures are made by a corporation than when they are made by individuals.

G. Compelled Speech

The First Amendment protects not only the right to speak but also the right *not* to speak. All too often, governments attempt to compel companies to speak against their will, either by forcing them to say things they do not wish to say or by forcing them to provide financial support for speech with which they disagree. WLF repeatedly has litigated in support of companies and individuals

whose First Amendment right not to speak is being infringed upon.

Johanns v. Livestock Marketing Ass'n. On May 23, 2005, the U.S. Supreme Court ruled that the federal government may force beef producers to provide financial support for advertising with which they disagree, because the government at least nominally supervises the advertising. The 6-3 decision was a setback for WLF, which filed a brief urging the Court to strike down the advertising program. WLF argued that the First Amendment protects not only the right to speak but also the right not to speak, and that forcing someone to provide financial support for private speech with which he disagrees violates his First Amendment rights. The Court held that so long as the speech in question originates with the government, the First Amendment does not prohibit the government from forcing small groups of people to fund the speech against their will. The Court left open the possibility that the plaintiffs could still establish, in later proceedings, that the government was not exercising any control over the speech – in which case they could prevail on their First Amendment claims.

R.J. Reynolds Tobacco Co. v. Shewry. On February 21, 2006, the U.S. Supreme Court declined to review an appeals court decision that rejected a First Amendment challenge to an advertising campaign conducted by the State of California. The Court's action, made without comment, was a setback for WLF, which filed a brief urging the Court to review the appeals court ruling. WLF argued that the First Amendment prohibits a State from forcing a company to pay for advertisements that vilify the company. California imposes a special fee on the tobacco industry and then uses it to finance a \$25 million per-year ad campaign that repeatedly portrays tobacco companies as liars and "public enemies." WLF argued that the First Amendment protection against compelled financial support of speech to which one objects has been recognized repeatedly by the courts and applies just as strongly when the speaker is the government as it does when the speaker is a private party. WLF argued that the vilification campaign is unconstitutional because the government may not use funds obtained from a small group of citizens to finance ideological speech to which those citizens object. WLF also filed briefs in the case when it was before the appeals court.

Gerawan Farming, Inc. v. Kawamura. On June 3, 2004, the California Supreme Court issued a decision that sets strict free-speech standards for reviewing a California law that compels farmers to pay for advertisements generically promoting plums. The court did not strike down the law; rather, it remanded the case for a trial, during which the California Supreme Court's new standards were to be applied. The decision was a partial victory for WLF, which filed a brief arguing that forcing individuals to fund advertising with which they disagree violates their free-speech rights. WLF had asked the court to strike down the law without ordering a trial. The advertising in question conveys the message that all California plums are of uniformly good quality. Gerawan objects to being forced to pay for those ads, because it has invested heavily in developing a distinctive, high-quality plum.

United States v. United Foods, Inc. On June 25, 2001, the U.S. Supreme Court handed WLF a victory by striking down a federal program forcing farmers to contribute to generic advertising with

which they disagree. The Court agreed with WLF that compelled *commercial* speech deserves no less constitutional protection than other forms of compelled speech. This case arose from a constitutional challenge brought to overturn certain provisions of a federal law that requires mushroom growers to fund generic advertising. In its brief filed with the Supreme Court, WLF had urged the Court to adopt the most searching standard of judicial review – strict scrutiny – in cases where a governmentally mandated subsidy program is challenged on free speech grounds. WLF concluded that the mandatory subsidy in this case cannot survive the strict scrutiny test.

Board of Regents of the Univ. of Wisconsin v. Southworth. On March 20, 2000, the U.S. Supreme Court overturned a court of appeals ruling and held that compelling objecting students to pay “student fees” to subsidize the political activities of activist campus groups does not violate the students’ First Amendment rights because the funding scheme was viewpoint neutral. The University of Wisconsin at Madison distributes approximately \$1 million a year in student fees to private organizations on campus, including Ralph Nader’s Public Interest Research Group (PIRG); the Internationalist Socialist Organization; and the Militant Student Union. Other universities across the United States have similar funding schemes, although some of them allow objecting students to opt out of the system. WLF argued that compelling college students to subsidize the political speech and lobbying activities of activist groups violates the objecting students’ fundamental First Amendment rights not to be forced to subsidize the speech of others.

Glickman v. Wileman Bros. & Elliott, Inc. On June 25, 1997, the U.S. Supreme Court upheld a federal program that requires California fruit growers and distributors to fund generic fruit advertising even though they disagree with the message being conveyed by the advertisements. The 5-4 decision was a setback for WLF, which had filed a brief arguing that the program violated First Amendment protections against compelled speech. WLF’s brief argued that the First Amendment protects not only the right to speak but also the right not to speak, and that the latter includes the right not to be forced to provide financial support for others’ speech. WLF also argued that the protection against compelled speech is not lessened simply because the speech one is forced to support is commercial in nature.

Hollingsworth v. Lane Community College. On March 24, 1999, the U.S. Court of Appeals for the Ninth Circuit upheld a lower court decision that rejected a challenge by a group of students who were forced to fund Oregon Student Public Interest Research Group (OSPIRG) at Lane Community College. The decision was a setback for WLF, which filed a brief urging the appeals court to overturn a lower court decision dismissing a challenge to the funding scheme. WLF argued that compelling the students to subsidize a political and ideological group with which they disagreed violated their First Amendment rights. OSPIRG is just one of many Naderite PIRG groups that operate on campuses across the country and lobby state legislatures on behalf of liberal causes. All students at these schools are forced to pay a portion of their student fees to these campus PIRG groups, although a few universities refund students the portion of fees earmarked for PIRG if they so request through a cumbersome procedure.

Smith v. Regents of University of California. In February 1993, WLF scored a victory when

the California Supreme Court ruled that state universities are prohibited by the state constitution as well as the First Amendment from using a student's mandatory fees to fund campus organizations whose political activities the student finds objectionable. The court agreed with WLF that requiring students to financially support political and ideological organizations through mandatory student fees violates the students' rights to freedom of speech and association. The case arose at the University of California at Berkeley, where student fees were used to subsidize a number of environmental, anti-business, and radical organizations.

Keller v. State Bar of California. On June 4, 1990, the U.S. Supreme Court unanimously held that attorneys cannot be compelled to support the political and ideological campaigns of state bar associations as a condition of practicing law. The decision was a victory for WLF, which filed a brief in support of the objecting attorneys. WLF argued that because California requires individuals wishing to practice law to join the state bar, the use of mandatory bar dues to support political and ideological causes violates the First Amendment rights of attorneys not to be forced to fund speech with which they disagree.

II. CIVIC COMMUNICATIONS PROGRAM

WLF recognizes that its litigation and administrative agency advocacy is not enough to bring about a long-term effect in opposing the efforts of activists and policy makers hostile to commercial speech. WLF has also sought to influence public debate and provide information through its Civic Communications Program. This targeted and broad-based program features WLF's sponsorship of frequent, well-attended media briefings featuring experts on a range of commercial speech-related topics, the publication of advocacy advertisements in national journals and newspapers, and participation in countless advertising and commercial speech symposia. WLF supplements these efforts by making its attorneys available on a regular basis to members of the news media — from reporters for general-circulation newspapers to writers for specialized legal journals.

A. Media Briefings

The centerpiece of WLF's Civic Communications Program is its media briefings, which bring news reporters from the print and electronic media together with leading experts on a wide variety of legal topics. WLF sponsors more than a dozen such breakfast briefings each year, often focusing on health-related topics. Recent media briefings on commercial speech-related issues have included the following:

Scrutiny of Medical Education Grants: A Chilling Wind for Doctors and Patients?,

- Jeffrey N. Gibbs, Hyman, Phelps & McNamara, P.C.
- Steven E. Irizarry, ML Strategies
- Laura Frick Laemmler, Patton Boggs LLP

Regulating Drug Promotion: Assessing a Tumultuous 2005 and Prospects for the New Year

- David Bloch, Reed Smith
- Adonis Hoffman, American Association of Advertising Agencies
- Richard A. Samp, Washington Legal Foundation

***Veneman v. Livestock Marketing*: Compelled Commercial Speech Pays Another Visit to the Supreme Court**

- Philip C. Olsson, Olsson, Frank and Weeda, P.C.
- Gregory G. Garre, Hogan & Hartson L.L.P.
- Thomas C. Goldstein, Goldstein & Howe, P.C.

Alcohol Use and Promotion: The Next Target for “Regulation by Litigation”?

- John A. Calfee, American Enterprise Institute
- Jonathan Turley, George Washington University
- John J. Walsh, Carter, Ledyard & Milburn LLP

“Off Label” Communications At Risk: Promoting Prescription Drugs in an Uncertain Legal Environment

- John F. Kamp, Wiley, Rein & Fielding
- Stephen Paul Mahinka, Morgan Lewis LLP
- Richard A. Samp, Washington Legal Foundation

Free Speech & Public Health: FDA, Congress, and the Future of Food and Drug Promotion

- John E. Calfee, American Enterprise Institute
- Richard L. Frank, Olsson, Frank & Weeda
- Sandra J. P. Dennis, Morgan Lewis LLP

***Washington Legal Foundation v. Henney*: The Appeals Court’s Ruling and FDA’s Curious Response on Off-label Promotion**

- Bert W. Rein, Wiley, Rein & Fielding
- Robert A. Dormer, Hyman, Phelps & McNamara
- Richard A. Samp, Washington Legal Foundation

Does FCC’s “Public Interest Mandate” Inhibit Our Freedom to Communicate?

- The Honorable Harold Furchtgott-Roth, Federal Communications Commission
- Richard E. Wiley, Wiley, Rein & Fielding
- Robert L. Corn-Revere, Hogan & Hartson LLP
- Randolph J. May, The Progress and Freedom Foundation

Tobacco Legislation: A Constitutional Tragedy in the Making?

- Solange E. Bitol, American Civil Liberties Union
- Robert A. Levy, The Cato Institute

FCC and the First Amendment: An ‘Elastic’ Public Interest Mandate?

- The Honorable James H. Quello, former Commissioner of the Federal Communications Commission

B. Web Seminars

WLF Web Seminars, initiated in March 2005, present viewers with live webcast analysis and commentary by noted legal experts on timely developments in law and public policy. These hour-long presentations are also conveniently archived and available on WLF's website. The speakers for the programs, who provide their insights on a *pro bono* basis, are leading experts in the field of law to be discussed. Recent web seminars on commercial speech-related issues have included the following:

An Unattractive Legal Theory: Lessons from the Successful Defense of Anti-Alcohol Advertising Class Actions

•J. Russell Jackson, Skadden, Arps, Slate, Meagher & Flom LLP

***Serono* and DOJ's False Claims Settlement: Implications for Medical Product Marketing**

•Laura Frick Laemmler, Patton Boggs LLP
 •Richard A. Samp, Washington Legal Foundation

Got Lawyers?: Why Court Should Dismiss Activists' Anti-Milk "Consumer Protection" Suit

•Richard A. Samp, Washington Legal Foundation

C. Advocacy Ads

Since 1998, the Washington Legal Foundation has published a series of opinion editorials titled "In All Fairness" on the op-ed page of the national edition of *The New York Times*. The op-ed series has appeared over 100 times, reaching over five million readers in 70 major markets as well as 90 percent of major newspaper editors. Excessive government regulation of commercial speech has been the focus of many "In All Fairness" columns:

Exploiting Beer, Liquor & Food

(Activists' attacks on advertising of disfavored products in the name of protecting children and health are actually a tactic to promote their special interest agenda)

Will Ronald McDonald Survive the Millennium?

(Consumer and regulatory activism against disfavored products poses threat to consumer choice)

A Constitutional Tragedy in the Making

(Legislation regulating tobacco advertising raises serious First Amendment concerns for all businesses)

Gagging Free Enterprise

(Courts and regulators should demonstrate more sensitivity to the constitutional implications of restricting businesses' speech)

Eating Away at Our Freedoms

(Attacks by consumer activists against certain food products harm consumer choice and result in costly regulations and taxes)

A New FDA?

(FDA should expedite its drug approval procedures to improve public health and stop micromanaging drug advertising)

Bring Accountability to FDA

(Excessive FDA enforcement and misguided regulatory policies harm the health of Americans)

The World According to FDA

(FDA's policy to regulate the dissemination of publications describing off-label use of FDA-approved drugs harms the health of Americans and violates the First Amendment)

These and other "In All Fairness" columns are available at WLF's web site, www.wlf.org.

D. Public Appearances

WLF attorneys regularly address policymakers and thought leaders on commercial speech issues. WLF attorneys have appeared as featured panelists and speakers on commercial speech issues before such institutions as the Federal Trade Commission, the Food and Drug Law Institute, the American Medical Association, the Federalist Society, the Heritage Foundation, the American Bar Association, the Pharmaceutical Research and Manufacturers of America, and MedicalAlley. What follows are highlights of the numerous public appearances that WLF attorneys have made in the past decade to address commercial speech issues:

March 30, 2006, WLF Chief Counsel Richard Samp was a featured panelist at the Medical Device Regulatory and Compliance Congress, held at Harvard University; Samp discussed manufacturers' First Amendment rights to speak truthfully about FDA-approved medical products.

December 14, 2005, Samp was the keynote speaker at a breakfast symposium in Minneapolis sponsored by MedicalAlley and MNBIO. Samp's speech focused on recent federal government enforcement actions – directed against advertising and promotional activities of the pharmaceutical and medical device industries – under the False Claims Act and the anti-kickback statute.

May 11, 2005, Samp was a featured speaker at a seminar in New York City sponsored by Harvard Business School Publishing. Samp spoke on the corporate community's First Amendment rights to speak out on issues of public importance.

January 27, 2005, Samp was a featured speaker at a conference organized by the Food & Drug Law Institute in Washington, D.C. entitled, "Product Liability for FDA Regulated Products: In What Kind of World Are We Living?" Samp addressed tort liability faced by drug manufacturers for speaking truthfully about their products.

January 23, 2004, Samp was a featured speaker at the annual meeting in Atlanta of NAAMECC (a trade group for companies that produce continuing medical education symposia), warning against government restrictions on the First Amendment right to speak truthfully regarding medical issues.

November 20, 2003, Samp addressed the American Bar Association's annual pharmaceutical conference in Philadelphia, arguing that expanded use of the False Claims Act as a vehicle for suing drug companies is jeopardizing free speech rights and the ability of drug company's to continue to develop new, life-saving therapies.

November 8, 2003, Samp addressed the annual meeting of the Society for Academic Continuing Medical Education in Washington, arguing that proposed restrictions on who may speak at Continuing Medical Education events are far too restrictive.

September 9, 2003, Samp addressed the American Medical Association's National Task Force on Continuing Medical Education (CME) in Chicago; Samp argued that proposed restrictions on who can speak at CME gatherings violate First Amendment norms.

April 23 and again June 26, 2003, Samp appeared on CNBC to discuss *Nike v. Kasky*, the Supreme Court case that addressed the First Amendment right of corporations to freely discuss matters of public interest.

October 25, 2002, Samp was a featured panelist at a symposium organized by the Federalist Society, entitled, "FDA and the First Amendment."

October 7, 2002, Samp was a panelist at the annual conference of the Regulatory Affairs Professional Society in Washington, D.C., speaking on "The First Amendment and FDA Regulation."

September 11, 2002, Samp spoke at the Food and Drug Law Institute's ("FDLI") annual conference in Washington, regarding First Amendment constraints on FDA regulation of speech by pharmaceutical companies.

August 1, 2002, Samp was a featured panelist in an audio conference sponsored by FDLI on "First Amendment Issues Facing the Food and Drug Administration."

May 22, 2002, WLF Chairman Daniel Popeo was the featured speaker at the Annual Meeting of the Medical Device Manufacturers Association (MDMA). At the MDMA Chairman's Luncheon, Popeo discussed the crucial work of WLF in promoting open markets, free enterprise, and competition, and WLF's legal activities challenging excessive regulation by FDA.

May 18, 2001, Samp spoke at a luncheon of the Philadelphia chapter of the Federalist Society, regarding FDA regulation of manufacturer speech.

April 20, 2000, Samp was a featured panelist at a New York City symposium sponsored by the Federalist Society, entitled, "The Future of Commercial Speech."

April 6, 2000, Samp addressed a symposium in Washington, D.C. sponsored by the Drug Information Association, regarding "Promoting, Prescribing, and Paying for Off-Label Indications."

September 13, 1999, Samp was a panelist at the FDLI's annual conference, discussing First Amendment restrictions on FDA regulation.

August 25, 1999, Samp was the keynote speaker at the annual meeting of the Indiana Medical Device Manufacturers Association in Indianapolis, where he discussed WLF's successful challenge to FDA speech restrictions.

June 29, 1999, Samp addressed an FDLI conference regarding manufacturer dissemination of peer-reviewed journal articles that discuss off-label uses of FDA-approved products.

May 20, 1999, Samp addressed an FDLI conference regarding WLF's First Amendment victory over the FDA in *WLF v. Henney*.

January 28, 1999, Samp addressed the Food, Drug, and Cosmetics law section of the New York Bar Association on WLF's victory in *WLF v. Henney*.

January 13, 1999, WLF Legal Studies Division Chief Glenn Lammi provided educational commentary on the *WLF v. Henney* case to a group of pharmaceutical marketers at a Center for Business Intelligence seminar.

October 26, 1998, Samp was the keynote luncheon speaker at the annual meeting of the Outdoor Advertising Association of America; Samp spoke about First Amendment limitations on the power of government to prohibit billboards.

September 10, 1998, Samp addressed a FDLI symposium, to discuss WLF's court victories over FDA on First Amendment issues.

June 13, 1997, WLF Senior Executive Counsel Paul Kamenar was a featured speaker at the 6th Annual Conference on Biologics and Pharmaceuticals sponsored by International Business Communications, discussing WLF's First Amendment lawsuit against FDA.

April 9, 1997, Samp addressed a conference sponsored by the Drug Information Association in New Orleans, regarding efforts by FDA to suppress speech regarding off-label uses of approved drugs and medical devices.

March 20, 1996, Popeo was a keynote speaker at a conference of the Healthcare Marketing & Communications Council in New York City discussing reform of FDA, WLF's litigation against FDA, and other related programs promoting commercial free speech.

December 7, 1995, Samp spoke to a group of pharmaceutical executives at a Rockville, Maryland forum sponsored by International Business Conferences, regarding WLF's continuing efforts to prevent FDA abuse of First Amendment rights.

December 7, 1995, Samp was a featured speaker (along with Rep. Joe Barton) at a forum sponsored by the Heritage Foundation entitled, "Is the FDA Killing America?"

October 20, 1995, Samp addressed (along with U.S. Senator Bill Frist of Tennessee) a gathering of orthopedic surgeons at a symposium of the North American Spine Society on the need to streamline FDA.

October 18, 1995, Samp testified before an FDA panel, urging FDA to lift restrictions on direct-to-consumer advertising of prescription drugs.

September 20, 1995, Lammi spoke at a meeting of the Ad Hoc In-House Counsels Working Group, a group of attorneys for pharmaceutical companies, on FDA's restrictions on advertising and promotion.

September 19, 1995, Popeo served on the faculty at the American Medical Association's Sixth National Conference on Continuing Medical Education. Popeo discussed WLF's lawsuit against FDA regarding the suppression of medical literature discussing off-label uses of FDA-approved drugs and devices.

June 27, 1995, Kamenar was a featured speaker at an FDLI conference in Washington, D.C. He discussed WLF's FDA-reform project and its lawsuit against FDA for prohibiting the dissemination of information about off-label uses of approved drugs and devices.

June 16, 1995, Lammi appeared on National Empowerment Television to discuss FDA reform.

May 22, 1995, Kamenar debated U.S. Representative Don Wyden (D-Ore.) and Bruce Silverglade of the Center for Science in the Public Interest on "America's Talking" cable television network, regarding FDA reform.

March 13, 1995, Samp addressed the annual meeting of the Pharmaceutical Research and Manufacturers of America (PhRMA) on the need for reform of FDA.

January 31, 1995, Samp was a featured guest on the Diane Rehm Show (syndicated by WAMU-Radio in Washington, D.C.), debating the need for reform of FDA with Dr. Sidney Wolfe of the Public Citizen Health Research Group.

III. PUBLICATIONS

WLF's Legal Studies Division is the preeminent publisher of persuasive, expertly researched, and highly respected legal policy papers. WLF publishes in seven different formats, which range in length from concise LEGAL BACKGROUNDERS covering current developments affecting the American legal system, to comprehensive Monographs providing law-review-length inquiries into significant legal issues.

Since its inception fifteen years ago, WLF's Legal Studies Division has produced a voluminous library of publications regarding commercial speech rights. The areas on which these papers have focused range from substantive explanations of key court decisions to analyses of federal and state regulations and legislation for their impact on commercial speech rights. Authoring these

papers *pro bono* for WLF are America's leading commercial speech experts from business, government, the judiciary, private law firms, and academia. Notable authors include: New York University law professor **Burt Neuborne**; University of San Diego Distinguished Professor of Law **Bernard Siegan**; U.S. Court of Appeals for the Ninth Circuit **Judge Alex Kozinski**; then-FDA Chief Counsel **Daniel Troy**; and former Federal Appeals Court **Judge Robert Bork**.

WLF commercial speech publications have been cited in influential court rulings, law review articles, legal briefs, and congressional debates; have provided intellectual firepower to those who are fighting against advertising restrictions at the federal and state levels; are relied upon by constitutional and advertising issue reporters; and are frequently reprinted in widely read trade journals and newsletters.

Judicial Chorus Against "Attractive Advertising" Suits Grows Louder With Ruling

By **J. Russell Jackson**, a partner at Skadden, Arps, Slate, Meagher, & Flom LLP and an adjunct professor of law at Brooklyn Law School.

LEGAL OPINION LETTER, June 16, 2006, 2 pages

D.C. Court Dismisses "Attractive Advertising" Class Action Lawsuit

By **J. Russell Jackson**, a partner in the Complex Mass Torts Group of New York's Skadden, Arps, Slate, Meagher & Flom LLP and an adjunct associate professor of law at Brooklyn Law School.

COUNSEL'S ADVISORY, May 5, 2006, 1 page

Health And Speech Rights At Risk from Attacks On Medical Education

By **Jeffrey N. Gibbs**, a principal with the law firm Hyman, Phelps & McNamara, P.C. in its Washington, D.C. office.

LEGAL BACKGROUNDER, April 7, 2006, 4 pages

Advertising And Preemption Under FDA's New Drug Labeling Rule

By **Tish E. Pahl**, a principal with Olsson, Frank and Weeda, P.C.

LEGAL OPINION LETTER, March 24, 2006, 2 pages

Federal And State Courts Reject "Attractive Advertising" Claims

By **J. Russell Jackson**, a partner in the Complex Mass Torts Group of New York's Skadden, Arps, Slate, Meagher & Flom LLP and an adjunct associate professor of law at Brooklyn Law School.

LEGAL BACKGROUNDER, March 10, 2006, 4 pages

Court Properly Dismisses Anti-Alcohol Class Action Suit

By **Cari K. Dawson**, a partner, and **Tiffany L. Powers**, an associate, with the law firm of Alston & Bird LLP.

COUNSEL'S ADVISORY, December 16, 2005, 1 page

"Off-Label" Speech: Uncertainty Reigns For Device & Drug Makers

By **Ralph F. Hall**, Visiting Associate Professor of Law at the University of Minnesota Law School and Counsel to the law firm Baker & Daniels, Indianapolis, Indiana, and Washington D.C.

LEGAL BACKGROUNDER, December 2, 2005, 4 pages

Beware: Warning Labels On Soft Drinks

By **Michael J. O'Flaherty**, a principal at the law firm Olsson, Frank and Weeda, P.C., who concentrates his practice in food and dietary supplement regulatory matters.

LEGAL BACKGROUNDER, November 4, 2005, 4 pages

Conversations With: Commercial Free Speech

Features **The Honorable Dick Thornburgh**, Counsel to the law firm Kirkpatrick & Lockhart Nicholson Graham LLP moderating a discussion with leading First Amendment experts **Floyd Abrams** of the New York City law firm Cahill Gordon & Reindel LLP; and **Eric S. Sarnier**, Senior Assistant General Counsel of Praxair, Inc., and a former counsel with the law firm Skadden, Arps, Slate, Meagher & Flom LLP in its New York City office.

CONVERSATIONS WITH, Summer 2005, 8 pages

Conditioning FDA Approval On Agreement Not To Advertise Violates Law And Constitution

By **Christopher A. Brown**, an associate in the Food and Drug practice group of the law firm Sonnenschein Nath & Rosenthal LLP in its Washington, D.C. office, and **Teisha C. Johnson**, who was a summer associate with the law firm of Sonnenschein Nath & Rosenthal LLP in its Washington, D.C. office during the summer of 2005.

LEGAL BACKGROUNDER, July 15, 2005, 4 pages

Proposal Limiting Distribution Of Health Care Information Infringes Free Speech Rights

By **Glenn G. Lammi**, Chief Counsel to Washington Legal Foundation's Legal Studies Division.

LEGAL OPINION LETTER, June 17, 2005, 2 pages

State Attorney General Issues Opinion On Commercial Speech Rights

By **Glenn G. Lammi**, Chief Counsel to Washington Legal Foundation's Legal Studies Division.

COUNSEL'S ADVISORY, May 3, 2005, 1 page

State Drug Ad "Rebate" Proposal Treads On Commercial Speech Rights

By **Rosemary C. Harold**, formerly a partner with the Washington, D.C. law firm Wiley Rein & Fielding LLP and currently Deputy Director of the Mass Media Bureau at the Federal Communications Commission, and **Mark A. McAndrew**, an associate in the Washington, D.C. law firm Wiley, Rein & Fielding LLP.

LEGAL OPINION LETTER, March 25, 2005, 2 pages

Commercial Speech: Essential For Health Of Consumers And Free Enterprise

By **Timothy J. Muris**, Of Counsel to O'Melveny & Myers LLP, where he co-chairs the firm's antitrust and competition practice. Mr. Muris is also a George Mason University Foundation Professor of Law, and from 2001-04 he was Chairman of the Federal Trade Commission.

LEGAL BACKGROUNDER, March 25, 2005, 4 pages

Recent Court Rulings Undermine Suits Against Alcohol Advertising

By **Lisa Jose Fales**, a partner at Venable LLP in Washington, D.C., specializing in consumer protection and antitrust law; and **Ronald M. Jacobs**, an associate at Venable LLP in Washington, D.C., also specializing in consumer protection and antitrust law.

LEGAL BACKGROUNDER, February 11, 2005, 4 pages

Lawsuits Targeting Alcohol Ads Tread On Free Speech Rights

By **John J. Walsh**, Senior Counsel to the New York City law firm Carter Ledyard & Milburn LLP.
LEGAL BACKGROUNDER, October 15, 2004, 4 pages

Federal Appeals Court Rules Alcohol Ad Ban Unconstitutional

By **Eric S. Sarnier**, Senior Assistant General Counsel of Praxair, Inc., and a former counsel with the law firm Skadden, Arps, Slate, Meagher & Flom LLP in its New York City office.
LEGAL OPINION LETTER, October 1, 2004, 2 pages

State Fraud Suits Over Drug Clinical Trial Results Tread On Free Speech Rights

By **Mark E. Nagle**, a partner in the Washington, D.C. office of the law firm Troutman Sanders LLP, who, prior to joining the firm, served as Chief of the Civil Division in the United States Attorney's office for the District of Columbia.
LEGAL BACKGROUNDER, September 17, 2004, 4 pages

Senate Proposal On Drug Importation Treads On Constitutional Rights

By **Burt Neuborne**, John Norton Pomeroy Professor of Law at New York University Law School, where he has taught Constitutional Law, Federal Courts, Civil Procedure and Evidence for more than 30 years, and former National Legal Director of the ACLU.
LEGAL BACKGROUNDER, July 9, 2004, 4 pages

Activists' Product Placement Proposal Threatens Commercial Free Speech

By **Douglas J. Wood**, a partner at Reed Smith, LLP, a top 25 international law firm, and head of Reed Smith Hall Dickler, the firm's advertising and marketing practice.
LEGAL BACKGROUNDER June 11, 2004, 4 pages

Unique California Laws Imperil Speech On "Off-Label" Use Of Drugs

By **Lisa M. Baird** and **Michael K. Brown**, partners in the international law firm of Reed Smith LLP who specialize in litigation involving the pharmaceutical and medical device industries.
LEGAL BACKGROUNDER, May 14, 2004, 4 pages

Investigations Of Drug Promotion Threaten First Amendment Rights

By **Richard A. Samp**, Chief Counsel to the Washington Legal Foundation.
COUNSEL'S ADVISORY, April 16, 2004, 1 page

FDA Guidance for "DTC" Ads Strives To Advance Consumer Understanding

By **Rosemary C. Harold**, formerly a partner with the Washington, D.C. law firm Wiley Rein & Fielding LLP and currently Deputy Director of the Mass Media Bureau at the FCC, and **John F. Kamp**, of counsel to the law firm.
LEGAL OPINION LETTER, February 20, 2004, 2 pages

Compelled "Counter Advertising" For Alcohol Products Would Tread On Free Speech

By **Marc Sorini**, a partner with McDermott, Will & Emery's Alcohol Beverages & Products Group, and **Cary Greene**, a J.D. candidate at Emory Law School.
LEGAL BACKGROUNDER, September 5, 2003, 4 pages

Should Media Outlets Be Held Liable For Deceptive Advertising?

By **Randal M. Shaheen**, Special Counsel with the Washington, D.C. law firm Arnold & Porter.
LEGAL BACKGROUNDER, July 11, 2003, 4 pages

Compliance Planning For “Voluntary” Guidelines On Drug Marketing Practices

By **Susan B. Geiger**, a partner at the law firm Preston Gates Ellis & Rouvelas Meeds LLP in its Washington, D.C. office, **Brian K. McCalmon**, an associate at Preston Gates Ellis & Rouvelas Meeds LLP, and **Francie Makris, Esq.**, Washington D.C.
CONTEMPORARY LEGAL NOTE, July, 2003, 23 pages

FDA “Trans Fat” Labeling Proposal Treads On Commercial Free Speech

By **Christopher A. Brown**, an associate with the law firm of Sonnenschein Nath & Rosenthal in its Washington, D.C. office.
LEGAL OPINION LETTER, June 6, 2003, 2 pages

New CME Bias Standards Will Reduce Quality Of Medical Education

By **Alan R. Bennett** and **Dr. Gregory J. Glover**, partners with the law firm Ropes & Gray in its Washington, D.C. office.
LEGAL OPINION LETTER, June 6, 2003, 2 pages

Free Speech Rights Trump Goals Of Anti-Alcohol Activists

By **John J. Walsh**, senior counsel to the New York City law firm Carter Ledyard & Milburn LLP.
LEGAL BACKGROUNDER, March 14, 2003, 4 pages

FDA Must Clarify Drug Makers’ Ability To Publicly Defend Products

By **Kathleen M. Sanzo** and **Stephen Paul Mahinka**, partners in the Washington, D.C. office of the law firm of Morgan Lewis, LLP.
LEGAL OPINION LETTER, February 28, 2003, 2 pages

High Court Cases May Shape First Amendment’s Application To Federal Securities Laws

By **Larry E. Ribstein**, Richard W. and Marie L. Corman Professor of Law at the University of Illinois College of Law.
LEGAL OPINION LETTER, February 14, 2003, 2 pages

Dramatic Changes To CME Accreditation Process Compel Scrutiny And Comment

By **Richard Samp**, Chief Counsel of the Washington Legal Foundation.
COUNSEL’S ADVISORY, February 14, 2003, 1 page

Federal Court Ruling Impacts FDA Suppression Of Medical Speech

By **George W. Evans**, an Associate General Counsel, Pfizer Inc., and General Counsel–Pfizer Pharmaceuticals Group, and **Arnold I. Friede**, a Senior Corporate Counsel at Pfizer Inc., who formerly served in the FDA Chief Counsel’s Office.
LEGAL OPINION LETTER, November 15, 2002, 2 pages

FDA Limits On Print Drug Ads Violate First Amendment

By **Richard L. Frank**, a principal at the Washington, D.C. law firm Olsson, Frank and Weeda, P.C., and **Tish Eggelston Pahl**, a senior associate at Olsson, Frank and Weeda, P.C.

LEGAL BACKGROUNDER, October 4, 2002, 4 pages

***Kasky v. Nike*: U.S. Supreme Court Review Can Protect Free Public Debate**

By **Clark S. Judge**, the Managing Director of White House Writers Group, a communications and policy consulting firm based in Washington, D.C.

LEGAL OPINION LETTER, September 6, 2002, 2 pages

An FDA Q&A: How Does The First Amendment Limit Its Regulatory Power

By **Alan R. Bennett**, a partner in the Washington, D.C. office of the law firm Ropes & Gray, and **Kenneth P. Berkowitz**, President of KPB Associates, a Washington, D.C. consulting firm specializing in the regulation of medical communications.

LEGAL BACKGROUNDER, August 23, 2002, 4 pages

Proposed Limits On Prescription Drug Ads: A Constitutional Analysis

By **Bert W. Rein** and **Rosemary C. Harold**, respectively a partner and former partner at the Washington, D.C. firm Wiley, Rein & Fielding, and **John F. Kamp**, of counsel to the firm.

WORKING PAPER, July 2002, 40 pages

Drug Ads Enhance Health By Empowering Patients

By **Richard L. Manning, PhD**, Director of Economic Policy Analysis at Pfizer Inc.

LEGAL OPINION LETTER, May 10, 2002, 2 pages

DOJ Tobacco Suit Threatens Commercial Speech Rights

By **Elizabeth Vella Moeller**, an attorney with the Washington, law firm Patton Boggs LLP.

LEGAL OPINION LETTER, April 26, 2002, 2 pages

New Judicial Precedents Expand Commercial Speech Protection

By **Steven G. Brody**, a partner in the New York City office of the law firm King & Spalding.

LEGAL BACKGROUNDER, April 5, 2002, 4 pages

Excessive FDA Scrutiny Of DTC Ads Undermines Speech Rights

By **Sandra J. P. Dennis**, a partner, and **Lawrence S. Ganslaw**, an associate, in the Washington D.C. office of Morgan Lewis LLP in the FDA/Product Regulation Practice Group.

LEGAL BACKGROUNDER, May 18, 2001, 4 pages

Proposal To Deny Tax Deduction For Drug Ad Expenses Unconstitutional

By **John F. Kamp**, Of Counsel to the Washington, D.C. law firm Wiley, Rein & Fielding.

LEGAL OPINION LETTER, October 23, 2000, 2 pages

Supreme Court Should Expand Commercial Speech Protection

By **John J. Walsh**, senior counsel to the New York law firm Carter, Ledyard & Milburn.

LEGAL BACKGROUNDER, September 8, 2000, 4 pages

California High Court Should Protect Commercial Speech

By **Steven G. Brody**, a partner with the New York law firm King & Spaulding; and **Christine P. Jackson**, an associate with the New York law firm Cadwalader, Wickersham & Taft.

LEGAL OPINION LETTER, June 9, 2000, 2 pages

Proposal To Regulate Cigar Ads And Sales Sets Dangerous Precedent

By **William H. Lash, III**, former Assistant Secretary for Market Access and Compliance at the U.S. Department of Commerce and professor at George Mason School of Law.

LEGAL OPINION LETTER, January 21, 2000, 2 pages

Proposed Regulation Of Cigar Ads Unconstitutional

By **William C. MacLeod** and **John E. Villafranco**, partners with the Washington, D.C. law firm Collier Shannon Scott.

LEGAL OPINION LETTER, January 21, 2000, 2 pages

Constitutional Implications Of Display Advertising Restrictions

By **John F. Fithian**, Chairman of the National Association of Theater Owners and formerly a partner with the Washington, D.C. law firm Patton Boggs LLP.

LEGAL BACKGROUNDER, October 29, 1999, 4 pages

FDA And DTC Advertising: Changes, Challenges & Constitutional Scrutiny

By **Sandra J. P. Dennis**, a partner in the Washington D.C. office of Morgan Lewis LLP in the FDA/Product Regulation Practice Group.

CONTEMPORARY LEGAL NOTE, October 1999, 28 pages

Court Again Nullifies FDA Policies Restricting Health Care Information

By **George M. Burditt**, a partner with the Chicago law firm Bell, Boyd & Lloyd.

LEGAL OPINION LETTER, September 17, 1999, 2 pages

Free Flow Of Commercial Speech Essential To World Market

By **Richard M. Corner**, the Executive Director of the International Advertising Association (IAA) in New York City.

LEGAL BACKGROUNDER, August 20, 1999, 4 pages

FTC Treads On Free Speech Rights With Corrective Advertising Order

By **Barry J. Cutler**, a partner in the Washington, D.C. office of the law firm Baker & Hostetler.

LEGAL BACKGROUNDER, July 23, 1999, 4 pages

Court Ruling Frustrates Access To Off-label Drug Information

By **Mark Boulding**, General Counsel and Vice President, Regulatory Affairs for Medscape Inc.

LEGAL OPINION LETTER, April 30, 1999, 2 pages

Supreme Court Should Strengthen Commercial Free Speech Rights

By **John J. Walsh**, senior counsel to the New York law firm Carter Ledyard & Milburn LLP, and **Steven G. Brody**, a partner in the New York office of the law firm King & Spaulding.

LEGAL OPINION LETTER, April 16, 1999, 2 pages

FTC's Expansion Of "Unfairness" Jurisdiction Imperils Speech Rights

By **D. John Hendrickson**, a partner in the Los Angeles office of the law firm Hall Dickler Kent Goldstein & Wood LLP.

LEGAL BACKGROUNDER, January 22, 1999, 4 pages

Court Suppresses FDA Censorship Of Health Product Information

By **George M. Burditt**, a partner in the Chicago law firm Bell, Boyd & Lloyd.

LEGAL OPINION LETTER, November 4, 1998, 2 pages

Commercial Speech Restrictions Failing Federal Court Tests

By **Glenn G. Lammi**, Chief Counsel of WLF's Legal Studies Division.

COUNSEL'S ADVISORY, October 16, 1998, 1 page

Marketing Restrictions In Tobacco Legislation Are Unconstitutional

By **Solange E. Bitol**, former Legislative Counsel to the American Civil Liberties Union.

LEGAL BACKGROUNDER, May 1, 1998, 4 pages

FDA "Draft Guidance" Suppresses Critical Health Care Information

By **Marc J. Scheineson**, a partner with the law firm Alston & Bird in its Washington, D.C. office and a former FDA Associate Commissioner for Legislative Affairs, and **Katherine Chen**, a food and drug associate with the law firm Reed Smith in Washington, D.C.

LEGAL BACKGROUNDER, April 3, 1998, 4 pages

European Union Should Resist French-Style Alcohol Ad Restrictions

By **Marc E. Sorini**, a partner with McDermott, Will & Emery's Alcohol Beverages & Products Group.

LEGAL BACKGROUNDER, January 23, 1998, 4 pages

Tobacco Settlement Speech Limits Unconstitutional If Imposed By Law

By **Burt Neuborne**, the John Norton Pomeroy Professor of Law at New York University School of Law.

LEGAL OPINION LETTER, November 7, 1997, 2 pages

FCC Lacks Authority Over Alcohol Advertising

By **Glenn G. Lammi**, Chief Counsel to Washington Legal Foundation's Legal Studies Division.

LEGAL OPINION LETTER, November 21, 1997, 2 pages

Federal Agencies' Attacks On Ads Offend Commercial Speech Rights

By **Robert A. Levy**, a senior fellow in constitutional studies at the Cato Institute.

LEGAL OPINION LETTER, September 26, 1997, 2 pages

Public Comment Can Shape FDA Guidance On TV Advertising

By **Mark E. Boulding**, General Counsel and Vice President, Regulatory Affairs for Medscape

LEGAL OPINION LETTER, September 12, 1997, 2 pages

The Supreme Court's Puzzling Silence On Billboard Advertising Ban

By **Felix H. Kent**, a partner in the New York law firm Reed Smith LLP.

LEGAL BACKGROUNDER, July 11, 1997, 4 pages

Actions Against Alcohol Ads Blow Chilling Winds On Commercial Speech

By **William C. MacLeod**, a partner with the Washington, D.C. law firm Collier Shannon Scott.

LEGAL OPINION LETTER, May 2, 1997, 2 pages

FTC Should Continue Careful Approach On "Unfair" Alcohol Advertising Charges

By **Deborah Owen**, General Counsel of Armstrong World Industries and a former Commissioner of the Federal Trade Commission.

LEGAL BACKGROUNDER, February 21, 1997, 4 pages

A Constitutional Analysis Of FDA's Restrictions On Advertising

By **Jerome L. Wilson**, counsel to the New York law firm Clifford Chance Rogers & Wells LLP.

WORKING PAPER, February 1997, 27 pages

Attempts To Restrict Alcohol Ads Face Serious Constitutional Hurdles

By **Nell Kilburn Shapiro**, former President for Litigation Affairs for WLF.

LEGAL BACKGROUNDER, November 15, 1996, 4 pages

Federal Court Must Strike Down FDA Censorship Of Advertising

By **David S. Versfelt**, a partner with the New York office of the law firm Kirkpatrick & Lockhart.

LEGAL BACKGROUNDER, November 1, 1996, 4 pages

Supreme Court's Decision Requires FDA To Reconsider Free Speech Issues

By **Daniel A. Kracov**, a partner with the law firm Arnold & Porter, and **David J. Bloch**, a partner with the law firm Reed Smith LLP.

LEGAL BACKGROUNDER, July 26, 1996, 4 pages

Supreme Court Should Strike Down Compelled Commercial Speech

By **Richard A. Samp**, Chief Counsel for the Washington Legal Foundation.

LEGAL OPINION LETTER, June 21, 1996, 2 pages

Going For The Green: Activists Target Environmental Ad Claims

By **Jeffrey S. Edelstein**, a partner, and **Joel L. Goldberg**, an associate, with the New York City office of the law firm Reed Smith LLP.

LEGAL OPINION LETTER, March 15, 1996, 2 pages

Supreme Court Should Review Flawed Commercial Speech Decisions

By **Jeffrey R. Chanin**, a partner, and **Ragesh K. Tangri** and **Daralyn J. Durie**, associates, with the San Francisco law firm Kecker & Van Nest.

LEGAL OPINION LETTER, March 15, 1996, 2 pages

Activist FDA Threatens Constitutional Speech Rights

By **The Honorable Robert H. Bork**, who served as Circuit Judge, United States Court of Appeals for the District of Columbia Circuit, from 1982 to 1988, and as Solicitor General of the United States, Department of Justice, from 1973 to 1977.

LEGAL BACKGROUNDER, January 19, 1996, 4 pages

Canadian Commercial Speech Decision Sends Message To U.S. Policymakers

By **Glenn G. Lammi**, Chief Counsel of WLF's Legal Studies Division.

LEGAL OPINION LETTER, December 15, 1995, 2 pages

FDA Regulation May Inhibit Positive Uses Of The Internet

By **Daniel A. Kracov**, a partner with the law firm Arnold & Porter, and **David J. Bloch**, a partner with the law firm Reed Smith LLP.

LEGAL BACKGROUNDER, October 4, 1995, 4 pages

FDA Suppression Of Advertising To Consumers Violates The First Amendment

By **William C. MacLeod**, a partner with the Washington, D.C. law firm of Collier Shannon Scott.

LEGAL BACKGROUNDER, September 15, 1995, 4 pages

Comment On FTC Green Advertising Guidelines

By **Elhanan C. Stone**, counsel to the New York-based law firm Reed Smith LLP.

COUNSEL'S ADVISORY, September 15, 1995, 1 page

FDA Inhibits Free Flow Of Information On Medical Products

By **Alan R. Bennett**, a partner with the law firm Ropes & Gray in its Washington, D.C. office, and **Mark E. Boulding**, General Counsel and Vice President, Regulatory Affairs for Medscape

LEGAL BACKGROUNDER, September 1, 1995, 4 pages

Guidelines To Keep Advertisers Out Of Court

By **Lawrence Savell**, an attorney specializing in products liability defense and counseling in the New York City office of the law firm Chadbourne & Parke.

LEGAL BACKGROUNDER, September 1, 1995, 4 pages

Federal Court Blocks Consumer Activists' Attempts To Bring False Advertising Suits

By **Robert D. Paul**, a partner in the Washington, D.C. office of White & Case and former General Counsel of the FTC, and **Jay L. Levine**, an associate with the law firm Shaw Pittman.

COUNSEL'S ADVISORY, August 25, 1995, 1 page

Courts Must Delicately Balance Privacy And Commercial Free Speech Rights

By **Robert C. Cumbow**, an associate with the Seattle law firm Perkins Coie.

LEGAL BACKGROUNDER, August 11, 1995, 4 pages

Rubin v. Coors: Supreme Court Rejects Prohibitionism

By **Burt Neuborne**, John Norton Pomeroy Professor of Law at New York University Law School, where he has taught for more than 30 years, and former National Legal Director of the ACLU.

LEGAL OPINION LETTER, June 9, 1995, 2 pages

Federal Court Decision: A Roadblock To Advertising On Information Highway?

By **Daniel Brenner**, Vice President for Law and Regulatory Policy at the National Cable Television Association.

LEGAL OPINION LETTER, June 9, 1995, 2 pages

Advertising Bans Vulnerable To Constitutional And Statutory Challenges

By **Ralph D. Davis**, former Lecturer of Law and Marketing at Illinois Institute of Technology, Stuart School of Business, currently an attorney and consultant in Chicago.

LEGAL BACKGROUNDER, June 9, 1995, 4 pages

Appeals Court Should Protect Commercial Speech In Green Advertising Case

By **John J. Walsh**, senior partner with the law firm Carter, Ledyard & Milburn, and **Steven G. Brody**, a partner with the law firm King & Spalding.

LEGAL OPINION LETTER, February 17, 1995, 2 pages

FDA Direct-To-Consumer Advertising Regulation Raises Constitutional And Policy Concerns

By **James M. Johnstone**, a Washington, D.C. lawyer.

LEGAL BACKGROUNDER, January 20, 1995, 4 pages

Weigh In Against FDA Suppression

By **Richard A. Samp**, Washington Legal Foundation's Chief Counsel.

COUNSEL'S ADVISORY, December 16, 1994, 1 page

FTC's New Authority Over "Unfair" Advertising Is A Mixed Blessing For Commercial Speech

By **Richard E. Wiley**, Senior Partner, and **Hugh Latimer**, a partner, with the Washington, D.C. law firm of Wiley, Rein & Fielding.

LEGAL OPINION LETTER, December 2, 1994, 2 pages

What The FDA Doesn't Want You To Know Could Kill You

By **Richard A. Samp**, Washington Legal Foundation's Chief Counsel.

LEGAL BACKGROUNDER, October 7, 1994, 4 pages

Supreme Court Should Strike Down New-Prohibitionist Restrictions On Commercial Speech In Coors Case

By **John F. Kamp, J.D., Ph.D.**, Of Counsel to the Washington, D.C. law firm Wiley, Rein & Fielding, and **Jay Fisher**, a former adjunct attorney, with the Washington, D.C. office of the American Association of Advertising Agencies.

LEGAL OPINION LETTER, September 23, 1994, 2 pages

New Prohibition Attacks On Alcohol: Demon Rum And Ineffective Paternalism Revisited

By **Richard Mendelson**, an attorney with the law firm of Dickenson, Peatman & Fogarty in Napa, California.

LEGAL BACKGROUNDER, August 12, 1994, 4 pages

Ibanez v. Florida Dept. Of Business And Professional Regulation: The Supreme Court Strengthens Commercial Speech Protection

By **Peter Nichols**, a New York attorney specializing in commercial litigation, and a former Manhattan Assistant District Attorney.

LEGAL BACKGROUNDER, August 12, 1994, 4 pages

City Ordinances Banning Tobacco And Alcohol Advertising Are Unconstitutional

By **Daniel E. Troy**, partner with the Washington, D.C. office of the law firm Sidley, Austin, Brown & Wood LLP and former Chief Counsel to the Food & Drug Administration.

LEGAL OPINION LETTER, July 29, 1994, 2 pages

Can Government, Private Interests Preserve Advertising As A Tool Of Competition In The Global Marketplace?

By **Barry J. Cutler**, an attorney with the Washington, D.C. office of the law firm Baker & Hostetler.

LEGAL BACKGROUNDER, July 15, 1994, 4 pages

Customs Rule On Country Of Origin Marks On Front Panels Of Frozen Produce Packages Lacks Legal Basis

By **Richard L. Frank**, **John W. Bode**, and **Michael J. O'Flaherty**, partners in the Washington, D.C. law firm of Olsson, Frank & Weeda, P.C. The firm specializes in representing clients before Congress and administrative agencies.

LEGAL BACKGROUNDER, June 17, 1994, 4 pages

The New Prohibition Has No Place In FTC Food Advertising Policy

By **Susan E. Chamberlin**, an attorney with the Washington, D.C. law firm of Wiley, Rein & Fielding.

LEGAL OPINION LETTER, May 6, 1994, 2 pages

New Prohibitionism On Trial: Judicial Approval Of Baltimore's Ad Ban Should Be Reversed

By **Ralph D. Davis**, an Adjunct Lecturer of Marketing and Law, Illinois Institute of Technology, Stewart School of Business and an attorney and consultant on marketing and business strategy in Chicago.

LEGAL BACKGROUNDER, April 29, 1994, 4 pages

New Prohibitionism And The First Amendment

By **Robert S. Peck**, former Legislative Counsel for the ACLU.

LEGAL BACKGROUNDER, April 29, 1994, 4 pages

Speakeasies In A New Age Of Prohibition

By **Sandy Shaw** and **Durk Pearson**, best-selling authors on health issues and commercial speech.

LEGAL BACKGROUNDER, April 22, 1994, 4 pages

A Structural Approach To Increasing Commercial Speech Protection

By **Robert A. Destro**, an Associate Professor at Columbus School of Law, Catholic University of America, Washington, D.C.

LEGAL OPINION LETTER, April 22, 1994, 2 pages

1993 Supreme Court Decisions Signal Opportunities To Challenge Commercial Speech Restrictions

By **Raymond L. Friedlob**, a partner with the Denver law firm Friedlob Sanderson Raskin Paulson & Tourtillott, and **George D. Kreye**, a partner with the Denver law firm Brenman Bromberg & Tenenbaum.

LEGAL OPINION LETTER, October 1, 1993, 2 pages

Supreme Court Decisions Reaffirm Need To Provide Commercial Speech Full Constitutional Protection

By **Bernard H. Siegan**, Distinguished Professor of Law at University of San Diego School of Law.

LEGAL OPINION LETTER, October 1, 1993, 2 pages

Recent Commercial Speech Decision Casts Doubt On Bans Of Advertising Names Or Images

By **Alan M. Slobodin**, former President of WLF's Legal Studies Division.

LEGAL OPINION LETTER, May 14, 1993, 2 pages

Proposed Alcohol Ad Warnings Are Contrary To Free Speech Values And Consumer Interests

By **John E. Calfee**, a resident scholar with the American Enterprise Institute.

LEGAL OPINION LETTER, May 14, 1993, 2 pages

California Proposal To Ban Cartoon Advertising For "Inherently Unsafe" Products Is Unconstitutional

By **Daniel E. Troy**, partner in the Washington, D.C. office of the law firm Sidley, Austin, Brown & Wood LLP and formerly Chief Counsel to the Food & Drug Administration.

LEGAL OPINION LETTER, April 2, 1993, 2 pages

Proposal To Eliminate Tax Deduction For Advertising Expenses Is Unconstitutional

By **Robert S. Peck**, former Legislative Counsel for the ACLU.

LEGAL OPINION LETTER, March 19, 1993, 2 pages

Anti-Industry Propaganda Is Constitutionally Suspect

By **Alan M. Slobodin**, former President of WLF's Legal Studies Division.

LEGAL OPINION LETTER, March 5, 1993, 2 pages

Will FTC Win Battle Against Kraft But Lose War In Its Effort To Limit Commercial Speech?

By **Hugh Latimer**, a partner with the Washington, D.C. law firm Wiley, Rein & Fielding.

LEGAL OPINION LETTER, February 5, 1993, 2 pages

Constitutionally Suspect Ad Ban Enacted In Seattle

By **P. Cameron DeVore**, a partner with the Seattle office of the law firm of Davis Wright Tremaine.

LEGAL OPINION LETTER, February 4, 1993, 2 pages

Product Placement In Movies Cannot Be Regulated As Commercial Speech Under The First Amendment

By **Jeffrey R. Chanin**, a partner with the San Francisco law firm Kecker & Van Nest, and **James E. Boasberg**, a Washington, D.C. attorney.

LEGAL BACKGROUND, January 22, 1993, 4 pages

Open Season On Commercial Speech

By **Stephen R. Bergerson**, an attorney with the Minneapolis firm of Fredrikson & Byron.
LEGAL BACKGROUNDER, December 4, 1992, 4 pages

Proposal Forcing Preclearance Of Drug Advertising Would Violate First Amendment

By **Alan R. Bennett**, a partner with the law firm Ropes & Gray in its Washington, D.C. office.
LEGAL BACKGROUNDER, November 20, 1992, 4 pages

Pepsico And Other Corporate Boycotts, 1990s Style: First Amendment Issues And Response

By **Elliot M. Minberg**, the Legal Director of People For the American Way.
LEGAL OPINION LETTER, November 6, 1992, 2 pages

BATF Censorship Is Hazardous To Health Of Alcohol Market And Free Speech

By **John E. Calfee**, a resident scholar with the American Enterprise Institute.
LEGAL OPINION LETTER, September 11, 1992, 2 pages

BATF Restriction On Truthful Health Claims In Wine Advertising Violates First Amendment

By **John A. Hinman**, a partner in the San Francisco law firm of Hinman & Carmichael, which specializes in alcoholic beverage law.
LEGAL BACKGROUNDER, September 11, 1992, 4 pages

Project "ASSIST": Federal Funds For Speech And Behavior Control

By **Jonathan W. Emord**, a Washington, D.C. attorney.
LEGAL BACKGROUNDER, July 10, 1992, 4 pages

California Proposal To Ban Cartoon Figures In Advertising Violates First Amendment

By **Daniel E. Troy**, partner in the Washington, D.C. office of the law firm Sidley, Austin, Brown & Wood and formerly Chief Counsel to the Food and Drug Administration.
LEGAL OPINION LETTER, June 19, 1992, 2 pages

Supreme Court Should Affirm Strong Protection For Commercial Speech

By **Robert S. Peck**, former Legislative Counsel for the ACLU.
LEGAL OPINION LETTER, April 10, 1992, 2 pages

California's Environmental Advertising Law — An Unconstitutional Restraint On Free Speech?

By **Rex S. Heinke**, a partner with the Beverly Hills law firm Greines Martin Stein & Richland, and **Kelli L. Sager**, a partner attorney with the Los Angeles office of the law firm Davis Wright Tremaine.
LEGAL OPINION LETTER, March 27, 1992, 2 pages

New York City's Attempt To Limit Tobacco Ads Is Constitutionally Suspect

By **Daniel E. Troy**, partner in the Washington, D.C. office of the law firm Sidley, Austin, Brown & Wood LLP and formerly Chief Counsel to the Food & Drug Administration.
LEGAL OPINION LETTER, February 21, 1992, 2 pages

Advisory Council's Ad Ban Recommendation Has No Place In Health Care Debate
By **Alan M. Slobodin**, former President of WLF's Legal Studies Division.
LEGAL OPINION LETTER, January 31, 1992, 2 pages

Congressional Confusion On Labeling And Advertising Could Deny Consumer Information And Free Speech
By **Timothy J. Muris**, former Chairman of the Federal Trade Commission, and **J. Howard Beales**, former Director of the Bureau of Consumer Protection at the Federal Trade Commission.
LEGAL OPINION LETTER, October 25, 1991, 2 pages

Overturning Of Canada's Advertising Ban Is A Lesson For America's Judges
By **Alan M. Slobodin**, former President of WLF's Legal Studies Division.
LEGAL OPINION LETTER, August 23, 1991, 2 pages

A Case Of Official Political Correctness: Anti-Industry Propaganda
By **Daniel D. Polsby**, Professor of Law at George Mason University.
LEGAL BACKGROUND, August 23, 1991, 4 pages

Making The World Safe From Kiddie-Food: Is AAP's Food Advertising Ban Idea Constitutional?
By **Alan M. Slobodin**, former President of WLF's Legal Studies Division.
LEGAL OPINION LETTER, August 9, 1991, 2 pages

States' Proposed Recycling Regulations Are Constitutionally Suspect
By **Richard A. Samp**, Chief Counsel to WLF.
LEGAL OPINION LETTER, July 19, 1991, 2 pages

Canadian Advertising Case Could Bolster Constitutional Arguments Against Restrictions On Commercial Speech In U.S.
By **Alan M. Slobodin**, former President of WLF's Legal Studies Division.
LEGAL OPINION LETTER, April 5, 1991, 2 pages

ACTIVITIES REPORT

to the

**WASHINGTON LEGAL FOUNDATION
BOARD OF TRUSTEES**

**SUPPORTING
NATIONAL AND HOMELAND SECURITY**

July 21, 2006

TABLE OF CONTENTS

INTRODUCTION 1

I. LITIGATION AND REGULATORY PROCEEDINGS 1

A. Detaining and Prosecuting Enemy Combatants 1

B. Detaining Alien Felons Pending Deportation 5

C. Protecting Victims of Terror 9

D. Protecting National Security Information 10

E. Protecting Our Nation’s Borders 11

**F. Protecting Military Activities from
 Environmental Restrictions 15**

**G. Opposing Application of Foreign Law
 in U.S. Courts 17**

H. Enhancing Homeland Security 18

II. CIVIC COMMUNICATIONS 20

A. Media Briefings 20

B. Advocacy Ads 21

C. Public Appearances 23

III. PUBLICATIONS 28

JULY 21, 2006

**ACTIVITIES REPORT TO THE
WASHINGTON LEGAL FOUNDATION
BOARD OF TRUSTEES**

**SUPPORTING
NATIONAL AND HOMELAND SECURITY**

The ideals upon which America was founded – individual freedom, limited government, a free market economy, and a strong national security and defense – are the same principles that the Washington Legal Foundation (WLF) defends in the public interest arena. WLF's overriding mission is to defend and promote the principles of freedom and justice.

Over the last 29 years, WLF has been the only public interest law and policy center on the forefront of legal battles to defend our national security and oppose terrorism, including filing legal briefs opposing the terrorists who bombed the World Trade Center in 1993. Since the attacks on America on September 11, 2001, WLF has redoubled its efforts in the courts, agencies, and public arena to promote its belief that the clearest path to peace and prosperity is through military strength and zero tolerance for those who seek to do us harm. This report highlights some of the more significant WLF national security/anti-terrorism activities over the past five years:

I. LITIGATION AND REGULATORY PROCEEDINGS

Litigation is the backbone of WLF's public interest programs. WLF litigates across the country before courts and administrative agencies in support of maintaining national security, both by providing our armed forces and law enforcement personnel with the tools to carry out their missions and by securing our nation's borders.

A. Detaining and Prosecuting Enemy Combatants

Before 9/11, the United States generally responded to terrorism by bringing traditional criminal prosecutions. One of the lessons of 9/11 was that the war on terrorism cannot be fought effectively if we continue to provide every terrorist with a full-blown criminal trial rather than doing as we have done in past wars: locking up enemy combatants without trial for the duration of hostilities. WLF has repeatedly gone to court to support the federal government when it is challenged by anti-war groups whose actions, if successful, would cripple our ability to prevent another major attack within this country. In many cases, *hundreds* of groups have lined up against the Bush Administration, while WLF is the Administration's *only* courtroom supporter.

Hamdi v. Rumsfeld. On June 28, 2004, the U.S. Supreme Court upheld the federal government's right to detain Yaser Hamdi, a Saudi-American accused of serving as a Taliban soldier in Afghanistan, without initiating criminal proceedings. The decision was a partial victory for WLF, which filed a brief in the case in support of the military. The Court agreed with WLF that the government's right to detain Hamdi as an enemy combatant is not diminished simply because of his claim to citizenship – he was born in Louisiana to Saudi parents and moved with his family to Saudi Arabia as an infant. The Court also agreed with WLF that the courts should deferentially treat the military's factual determination that Hamdi was in Afghanistan to fight for the Taliban, not (as Hamdi claims) to undertake humanitarian work. The Court remanded the case to the lower courts, however, finding that Hamdi should have been given a greater opportunity to prove his innocence than he was initially afforded by the federal appeals court. Hamdi was later released from custody after he agreed to abandon his U.S. citizenship and the military determined that he no longer posed a threat to national security.

Padilla v. Hanft. On April 3, 2006, the U.S. Supreme Court declined to review a lower court decision upholding the federal government's detention of Jose Padilla, the "dirty bomber" accused of being an al Qaeda operative. The decision was a victory for WLF, which filed a brief urging the Court not to hear the case. The Supreme Court neither declared the case moot nor vacated the lower court decision on mootness grounds, even though Padilla, a U.S. citizen, is no longer being held as an "enemy combatant" – Padilla was recently released from military custody and turned over to civilian authorities to face trial in connection with largely unrelated charges that he conspired to aid overseas terrorist organizations. As a result of the Supreme Court not taking any action to declare the case moot, the September 2005 appeals court decision in the government's favor remains standing and can serve as a precedent in future enemy combatant cases. WLF filed a total of four briefs in support of the government as Padilla's case wended its way through the federal courts over the past four years. On September 9, 2005, the U.S. Court of Appeals for the Fourth Circuit in Richmond upheld the federal government's detention of Padilla. As a result of decisions in this case, the courts have now clearly established that the government is entitled to detain without trial American citizens discovered fighting for enemy forces, just as it is entitled to detain any enemy soldier captured in time of war. The courts also agreed with WLF that the right to detain Padilla was not diminished simply because he was captured in Chicago rather than on some overseas battlefield. The government alleges that Padilla fought with al Qaeda/Taliban forces in Afghanistan against the United States. Padilla is currently imprisoned in Miami, awaiting trial on criminal charges alleging conspiracy to promote terrorism.

Hamdan v. Rumsfeld. On June 29, 2006, the U.S. Supreme Court struck down the Bush Administration's plan to convene military commissions to conduct trials of al Qaeda leaders accused of war crimes. The 5-3 decision was a setback for WLF, which filed a brief in the case urging that the plan be upheld. The Court held that while the President has the authority to convene military commissions, the commissions that he established were improper because they did not provide defendants with all of the procedural rights required under the

Uniform Code of Military Justice (UCMJ). The Court said that if the Administration wishes to employ its proposed procedures, it will have to go to Congress and ask it to amend the UCMJ. Alternatively, the Court ruled, the Administration could conduct trials before military commissions but must use the same procedural rules commonly employed in courts martial. WLF's brief argued that Congress has explicitly endorsed the creation of such commissions, which have been used throughout American history. WLF also filed briefs in the case when it was before the district court and the court of appeals. Despite the Court's ruling, the petitioner – who served as Osama bin Laden's personal driver and is accused of conspiring to murder Americans – remains in custody at Guantanamo Bay, Cuba; the ruling affects only the government's right to proceed with a trial, not its right to detain Hamdan.

Al Odah v. United States On March 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit held a second set of oral arguments in this case, which challenges detention of suspected terrorists at Guantanamo Bay, Cuba. The latest hearing was necessitated by Congress's adoption in December 2005 of the Detainee Treatment Act (DTA), which withdraws from the federal courts all jurisdiction to hear cases filed by Guantanamo detainees. WLF filed a brief on January 8, 2006, urging the court to rule both that the DTA is applicable to cases (such as this one) that were pending when the DTA was adopted, and that Congress acted constitutionally in withdrawing jurisdiction. WLF also filed a brief in April 2005, contesting the merits of the detainees' claims. WLF argued that the U.S. Constitution does not extend protections to aliens not living in the United States. WLF argued that the protections of the Constitution are reserved for U.S. citizens and others, such as resident aliens, who have contributed to American society and thus have a legitimate basis for invoking constitutional protections. WLF also argued that even if detainees were entitled to Due Process Clause protections, they have already received all the process that could possibly be due them under the Constitution. WLF noted that the American military has established the Combatant Status Review Tribunal (CSRT) system for adjudicating detainees' claims that they never fought for either the Taliban or al Qaeda. All of those still being detained at Guantanamo Bay have been determined by a CSRT to be enemy combatants who took up arms against the United States or its allies. It is uncontested that the military is authorized to detain enemy combatants until hostilities cease. WLF argued that the CSRT system satisfies the detainees' due process concerns, because it ensures that all detainees have a fair opportunity to contest their detention. This case is a follow-on to *Rasul v. Bush* (see below), in which the Supreme Court held that federal courts have jurisdiction to hear claims of nonresident aliens who are challenging their detention.

Rasul v. Bush. On June 28, 2004, the U.S. Supreme Court held that the federal courts have jurisdiction to hear a challenge to the U.S. military's decision to detain captured Taliban and al Qaeda fighters at the Naval Base in Guantanamo Bay, Cuba. The decision was a setback for WLF, which filed a brief urging a finding of no jurisdiction. The detained fighters filed petitions for writs of habeas corpus, alleging that their detention without trial violates their rights under the Fifth Amendment's Due Process Clause as well as their rights under international law. Ignoring a 1950 precedent to the contrary, the Court ruled 6-3 that the

habeas corpus statute adopted by Congress grants federal courts jurisdiction to hear claims filed by nonresident aliens who are challenging their detention. The Court did not address the merits of the detainees' claims, nor did it indicate how such claims are to proceed (*e.g.*, whether detainees should have access to counsel). In urging the Court to deny jurisdiction, WLF had argued that allowing America's enemies to use our courts to challenge military detention is one of the surest ways to hamper our military effectiveness.

Coalition of Clergy, Lawyers, and Professors v. Bush. On November 18, 2002, the U.S. Court of Appeals for the Ninth Circuit dismissed a habeas corpus petition filed by a group of activists on behalf of the detainees at Guantanamo Bay, Cuba. The court agreed with WLF that the plaintiffs lacked standing to bring the case. The activists had filed a petition for a writ of habeas corpus in federal district court in California, seeking judicial review of the conditions of confinement of the detainees, who include Taliban and al Qaeda fighters captured by U.S. forces in Afghanistan. The so-called "Coalition of Clergy, Lawyers, and Professors" included such activists as Ramsey Clark, a former Attorney General who has represented radicals and terrorists (including the PLO and one person who was convicted in the 1993 World Trade Center bombing), and activist law professor Erwin Chemerinsky.

Opposing ABA's Resolution on Torture. On August 9, 2004, the American Bar Association's (ABA) governing body, the House of Delegates, adopted a resolution at the ABA's annual meeting in Atlanta, Georgia, that condemned "degrading" or "cruel" treatment of any terrorist suspect who is in the physical control of the U.S. government – but it failed to define those terms. Because the ABA resolution could easily be read to prohibit the military from using effective and well-recognized interrogation techniques, WLF actively opposed the resolution. WLF argued before the House of Delegates that the ABA's extreme position was wrong both as a matter of law and on public policy grounds. WLF's views were presented by David B. Rivkin, Jr., a partner in the Washington, D.C. office of Baker & Hostetler, who represented WLF *pro bono* at the ABA meeting.

Opposing ABA's Resolution Condemning Designation of Enemy Combatants. On February 10, 2003, WLF presented testimony before the ABA's winter meeting in Seattle, Washington, opposing a Board of Governor's Resolution that condemned the Bush Administration's designation of certain terrorists and their supporters as "enemy combatants." WLF argued that the President has the constitutional authority to make such designations, regardless whether the terrorist is a United States citizen. Although the resolution was passed with modifications, WLF's legal arguments were ultimately vindicated in lawsuits involving U.S. citizens, and enemy combatants, Yaser Hamdi and Jose Padilla.

Jurisdiction of Military Tribunals over Terrorists. On March 7, 2003, WLF filed comments with the Department of Defense urging it to expand the categories of offenses committed by terrorists that could be subject to trial before military tribunals. WLF's comments related to crimes involving the use of poisonous gases, the improper use of a flag of truce, and aiding the enemy. WLF also recommended expanding acts of terrorism to include

solicitation, conspiracy, and attempted offenses. The Defense Department agreed, and ultimately revised its rules to expand the jurisdiction of military tribunals.

Revisions to Sentencing Guidelines for Terrorism. On March 19, 2002, WLF submitted comments to the U.S. Sentencing Commission supporting certain proposed revisions to its guidelines, policy statements, and commentary in response to adoption of the USA PATRIOT Act of 2001. WLF urged the Commission to adopt changes to its guidelines that would allow federal courts to impose the maximum punishment permitted by law for those who commit terrorist acts and for those who aid and conspire with them. The Sentencing Commission ultimately adopted the revisions.

Regulation Providing for Monitoring of Detainee-Lawyer Communications. On December 28, 2001, WLF filed comments with the U.S. Department of Justice (DOJ) supporting its interim regulations that allow DOJ to monitor conversations between certain suspected terrorists who are being detained and their attorneys. WLF argued that the regulations are clearly constitutional inasmuch as the attorney-client privilege does not extend to communications to an attorney that involve the commission of further crimes. WLF also noted that the DOJ regulations include constitutional safeguards, such as notification to both the detainee and the attorney that their conversations may be monitored and use of a special "taint team" that ensures that information obtained from monitoring is not given to prosecutors for use in any criminal trial. DOJ ultimately adopted the regulations on a permanent basis.

B. Detaining Alien Felons Pending Deportation

Federal law requires the deportation of all aliens convicted of supporting terrorism or of other felonies. However, effecting those deportations often takes years. WLF has repeatedly gone to court to ensure that convicted felons remain in detention while they are fighting deportation. Even after a deportation order has been entered, deportation can be delayed for years while immigration authorities seek a country willing to accept the convicted felon; many countries are slow in taking back their own citizens, while others (*e.g.*, Cuba) will not take anyone back. WLF also litigates in support of detention of convicted felons who are subject to final deportation orders; WLF argues that indefinite detention is appropriate, even when an alien felon subject to a final deportation order has no realistic short-term prospect of finding a country willing to accept him, if the convicted felon is deemed to pose a serious public safety risk.

Clark v. Martinez. On January 12, 2005, the U.S. Supreme Court held that the federal government may not indefinitely detain excludable aliens while they await deportation to their native countries, even if the aliens are dangerous felons. The decision was a setback for WLF, which filed a brief urging the Court to permit such detentions. The decision has resulted in the release from detention of more than 1,100 illegal aliens convicted of violent crimes. WLF had

argued that society's interest in being protected from violent criminals and terrorists far outweighs any interest that illegal aliens may have in being free from detention during the time it takes to arrange their deportation. The two cases before the Court involved Cubans who came to this country illegally in 1980 as part of the Mariel boatlift. Although at least one of them had been convicted of armed robbery in Cuba, they were released "temporarily" into U.S. society until Cuba could be persuaded to take them back. In the ensuing years, both Cubans were repeatedly convicted of violent crimes. WLF argued that the U.S. government need not give them yet another chance at freedom while they await deportation. The Court disagreed, holding that a 1996 federal statute bars indefinite detention of aliens with no prospect of being returned to their native countries. The Court made clear, however, that Congress was free to amend the law to provide for such detentions.

Snyder v. Rosales-Garcia. On June 23, 2003, the U.S. Supreme Court declined to review a lower-court decision that raised the same issue (detention of excludable aliens pending deportation to Cuba) that was later decided in *Clark v. Martinez* (see above). The decision was a setback for WLF, which on May 23, 2003 filed a brief urging that review be granted. The case involved two Cubans who sought to sneak into the country illegally in 1980 and were later convicted of numerous violent felonies. When their prison terms were completed, the INS sought to detain them indefinitely until their deportation could be arranged. The U.S. Court of Appeals for the Sixth Circuit (in conflict with other appeals courts) ruled that indefinite detention violated the alien felons' rights to liberty.

Al Najjar v. Ashcroft. On August 30, 2002, the Immigration and Naturalization Service (INS) deported Mazen Al Najjar, a suspected fundraiser for Palestinian terrorists, to Lebanon. Despite efforts by the ACLU and other civil libertarian groups, the INS was allowed to continue to detain Al Najjar up until the date of his departure. The continued detention of the suspected terrorist was a victory for WLF, which on two occasions filed briefs in the U.S. Court of Appeals for the Eleventh Circuit in Atlanta in support of Al Najjar's detention. His deportation brought to an end Al Najjar's final court challenge to his detention; the appeals court several weeks later dismissed the challenge as moot. In its most recent brief supporting Al Najjar's detention, filed on May 28, 2002, WLF argued that the INS does not violate the First Amendment rights of illegal aliens by detaining those it believes have engaged in fundraising for terrorist groups. WLF argued that such detention does not interfere with rights of political association, because fundraising goes beyond mere association and is not protected by the First Amendment.

Kiareldeen v. Ashcroft. On December 5, 2001, the U.S. Court of Appeals for the Third Circuit in Philadelphia reversed a district court decision finding that the INS was not even "substantially justified" in detaining a suspected alien terrorist pending deportation. Based on that finding, the lower court had ordered taxpayers to pay the suspected terrorist, Hany Kiareldeen, \$110,000 to cover his attorney fees. In reversing, the Third Circuit held that the district court's decision was "an abuse of discretion." The decision was a victory for WLF, which on October 25, 2001 had filed a brief in the case, arguing that the government is

always justified in detaining an illegal alien when it has reason to suspect that the illegal alien is a terrorist. The appeals court agreed with WLF that the government was justified in relying on classified evidence (i.e., evidence shown to the defendant in summary form only) in deciding to detain him.

Demore v. Kim. On April 29, 2003, the U.S. Supreme Court upheld the authority of the federal government to detain, pending completion of deportation proceedings, all aliens (including permanent resident aliens) subject to deportation because they have been convicted of aggravated felonies. The decision was a victory for WLF, which had filed a brief with the Court arguing that alien felons have no constitutional right to be free from detention during the time it takes to complete deportation proceedings. A federal law mandates detention of all such felons; the U.S. Court of Appeals for the Ninth Circuit struck down the law as a violation of felons' due process rights. The Court agreed with WLF that the statute is based on the reasonable assumption that *any* felon facing deportation will flee if released from detention after he has completed his criminal sentence. WLF also argued that Congress has explicitly prohibited courts from second-guessing such detention decisions.

Riley v. Radoncic. On May 5, 2003, the U.S. Supreme Court overturned a decision that challenged the authority of the federal government to detain, pending completion of deportation proceedings, those *illegal* aliens subject to deportation because they have been convicted of aggravated felonies. The decision was a victory for WLF, which had filed a brief urging the Court to uphold the authority of the federal government to detain such aliens. WLF argued that alien felons who admittedly are in this country illegally have no constitutional right to be free from detention during the time it takes to complete deportation proceedings. A federal law mandates detention in all such cases; the U.S. Court of Appeals for the Third Circuit struck down the law as a violation of illegal aliens' due process rights. In successfully urging the Supreme Court to overturn that decision, WLF argued that illegal aliens should be afforded extremely limited due process rights and that the federal statute mandating detention is based on the reasonable assumption that illegal alien felons will flee if released from detention after they have completed their criminal sentences. The case involved Sabrija Radoncic, a citizen of Yugoslavia who sneaked into the U.S. in 1991 and thereafter earned his livelihood smuggling other illegal aliens into the country.

Rule Denying Permanent Residency to Refugees Who Commit Major Crimes. On September 9, 2002, WLF filed comments with the Immigration and Naturalization Service (INS), supporting an INS proposal (ultimately adopted) that tightened immigration rules for refugees who commit major crimes and urging the INS to adopt rules that would absolutely prohibit granting permanent resident alien status to refugees who commit major crimes after arriving in this country. WLF argued that Congress has made clear that even permanent resident aliens who commit felonies should be deported as soon as possible, so there can be no justification for granting more leniency to refugees (who have a lower immigration status than do resident aliens) who engage in criminal activity. The INS's rule provided that refugees who commit violent crimes should be granted permanent resident alien status only in the most

extraordinary circumstances. While applauding that proposal as a step in the right direction, WLF argued that the rule should be amended to eliminate *all* exceptions.

Proposed Rule Regarding Detention of Aliens Subject to Final Deportation. On January 15, 2002, WLF filed comments with INS, strongly supporting the INS's proposed changes (ultimately adopted) to its custody review process governing the detention of aliens who are subject to a final order of removal. A June 2001 Supreme Court decision barred the INS in most cases from holding such aliens in custody *indefinitely* if the INS cannot locate a country willing to accept them. WLF applauded INS for coming up with new rules that comply with the Supreme Court's mandate without unnecessarily endangering public safety. WLF urged INS to change its policy in one significant respect: WLF urged that *all* aliens who have been convicted of an aggravated felony and are subject to a final order of removal be detained, *regardless* whether the INS can prove that they pose a threat to public safety.

Proposal for Procedural Reforms for Case Management of Board of Immigration Appeals. On March 21, 2002, WLF submitted comments in support of DOJ's proposed procedural reforms to improve case management at the Board of Immigration Appeals (BIA). The proposed rule (ultimately adopted) revised the structure and procedures of the BIA, provided for an enhanced case management procedure, and expanded the number of cases referred to a single BIA member for disposition. These changes have been a major factor in BIA's ability in subsequent years to significantly reduce its notoriously long backlog of cases.

Proposed Interim Rule Regarding Temporary Detention of Aliens. On November 19, 2001, WLF submitted comments in support of the interim rule amending the INS's rules on "Custody Procedures." The interim rule was a modest but needed measure that allowed the INS up to 48 hours, rather than the previous 24-hour period, within which to make a determination whether an arrested alien will continue to be held in custody or released on bond or recognizance. Adoption of this measure on a permanent basis has decreased the danger that suspected terrorists will be released before their identity can be uncovered.

Stays Pending Appeal in Immigration Detention Cases. On December 28, 2001, WLF filed comments with the Department of Justice supporting DOJ's proposal to provide an automatic stay pending appeal in any case in which an Immigration Judge orders the release of an alien previously ordered detained by the INS. WLF argued that in light of the enhanced risk of terrorist attacks, it is crucial that the INS take all steps to ensure that aliens who it believes pose a threat to public safety not be released while the issue of whether they pose a threat is still being litigated. WLF argued that aliens objecting to being detained while they fight deportation will still be entitled to rapid adjudication of their objections, because the DOJ proposal requires that any appeals from an Immigration Judge to the Board of Immigration Appeals must be handled expeditiously.

C. Protecting Victims of Terror

When Americans are killed or injured by terrorists, WLF supports their right to obtain compensation from the perpetrators. Most American terrorism victims do not bother to sue, because the potential defendants either lack financial resources or are not amenable to suit in American courts. But when a foreign government is shown to have assisted the terrorists, WLF regularly goes into court to assist Americans seeking compensation from those foreign governments – which often have substantial assets that plaintiffs can seize to satisfy judgments.

Acree v. Iraq. On April 25, 2005, the Supreme Court declined to review this important case seeking damages against Iraq and Saddam Hussein for torturing American Prisoners of War (POWs) during the 1991 Gulf War. The decision was a setback for WLF, which had filed a brief urging Supreme Court review. WLF also filed a brief in support of the former POWs when the case was before a federal appeals court; that court dismissed the case in 2004. It ruled that while the district court had jurisdiction in the case, federal law does not provide a cause of action for the POWs. The plaintiffs, Colonel Clifford Acree and 16 other American servicemen, filed suit against the Republic of Iraq in early 2002, seeking damages for injuries they suffered when they were physically and psychologically tortured after being captured by Iraqi forces during the 1991 Gulf War. The district court entered a large judgment in their favor, but the appeals court reversed. WLF filed its briefs on behalf of a bipartisan congressional group that included U.S. Senators George Allen, Tom Harkin, Patty Murray, and Harry Reid, and 17 Members of the U.S. House of Representatives.

Ungar v. Palestine Liberation Organization. On March 31, 2005, the U.S. Court of Appeals for the First Circuit in Boston required the Palestine Liberation Organization (PLO) and the Palestinian Authority (PA) to be answerable in court to claims that they are complicit in the deaths of Americans killed by Middle East terrorists. Because the PLO and PA refused to raise a merits-based defense in the trial court but instead chose to rely solely on their alleged sovereign immunity, that court entered a \$116 million default judgment against them in 2004. The First Circuit's decision upheld that massive judgment. The decision was a victory for WLF, which filed a brief in the case in support of the plaintiffs. The appeals court agreed with WLF that because there is not now a sovereign state of Palestine, neither the PLO nor the PA should be granted sovereign immunity from suit in U.S. courts, a privilege normally granted by the U.S. to other nations. The case arose in the aftermath of the murders of Yaron Ungar (an American citizen) and his wife Efrat at the hands of Hamas terrorists. Their survivors filed suit under the Antiterrorism Act against (among others) the PLO and the PA, claiming that those groups aided and abetted the murders. WLF's victory in the case became complete on November 28, 2005 when the Supreme Court declined to review the First Circuit's decision.

Jacobsen v. Oliver. On July 29, 2003, WLF filed a brief in the U.S. District Court for the District of Columbia, urging the court to hold that victims of Middle East terrorism are

permitted to seek punitive damages against MOIS (the Iranian foreign intelligence agency) based on MOIS's active involvement in the terrorist activity. WLF argued that allowing punitive damage awards against government sponsors of terrorism will make it less likely that governments will be willing to provide such support in the future. WLF argued that 1996 amendments to the Foreign Sovereign Immunities Act made clear that Congress did not intend to grant immunity to groups such as MOIS. On March 30, 2006, the court issued an order granting partial summary judgment to the defendants and dismissing a portion of the plaintiff's claims. Although the order said that a written decision would be forthcoming soon explaining the court's action, no decision had been issued by July 2006.

D. Protecting National Security Information

In this information age, the federal government needs to be careful not to make sensitive government information too readily accessible to potential terrorists. WLF regularly takes steps to ensure that government agencies are not inadvertently disclosing sensitive information and has gone into court to oppose activists' efforts to require disclosure of information that could endanger national security.

Center for National Security Studies v. Dep't of Justice. On June 17, 2003, WLF scored a major victory when the United States Court of Appeals for the District of Columbia Circuit upheld the decision by the Department of Justice (DOJ) to withhold the public release of the names and certain other information about those aliens detained in the United States following the September 11, 2001 terrorist attacks on America. The court agreed with WLF that releasing the information could interfere with law enforcement efforts, and that the government was not required by law to disclose the information. WLF filed briefs in the case in both the district court and court of appeals. The suit against the government was filed under the Freedom of Information Act (FOIA) by a group of activists, led by the ACLU. The suit sought the names of all aliens who were arrested or detained in connection with DOJ's investigation of the 9/11 terrorist attacks, as well as the names of any of their attorneys. The Supreme Court later denied the ACLU's request to review the case.

Interim Rule to Keep Detainee Information Confidential. On June 26, 2002, WLF filed formal comments with the INS supporting an interim rule (ultimately made permanent) that prohibited state and local governments from releasing any identifying information about alien detainees that are held in non-federal facilities under contract with the INS. Due to limited space availability in federal detention facilities, many of the aliens detained following the 9/11 terrorist attacks were held in state and local facilities. The effect of this rule was to pre-empt state and local disclosure laws that would otherwise have allowed the information to be released. The interim rule was issued in response to a ruling in a lawsuit brought by the American Civil Liberties Union of New Jersey, seeking the release of the names of alien detainees held in New Jersey's county jails under New Jersey's Right-to-Know law. WLF argued that releasing the names of all detainees would endanger national security.

Closing Public Reading Rooms Containing Sensitive Information About Dangerous Chemicals. Citing the risk of foreign and domestic acts of terrorism, WLF petitioned the EPA on December 8, 2001, to close all of its public reading rooms where sensitive information and data on the chemical industry can be easily obtained. WLF also petitioned the EPA to refrain from posting sensitive information on its website. Following the terrorist attacks on America on September 11, 2001, the EPA only “temporarily” shut down that part of its website which provided information to the public about the Risk Management Plans (RMP) submitted by companies regarding the specific location, use, storage, and production of dangerous chemicals. EPA nonetheless continued to make this sensitive information readily available for inspection by anyone who visited EPA reading rooms across the country. In response to WLF’s petition, EPA revised its policies by imposing additional restrictions on access to sensitive information.

Deleting Sensitive Materials from Government Websites. On December 31, 2001, WLF filed petitions with three separate government agencies, urging them to review their policies regarding posting sensitive information on their Internet sites. The three agencies were the National Nuclear Security Administration (NNSA), the Department of Transportation’s Office of Pipeline Safety (OPS), and the Nuclear Regulatory Commission (NRC). The NNSA’s responsibilities include the manufacture and maintenance of nuclear weapons materials for the Department of Defense. The OPS’s activities include the National Pipeline Mapping System, which provides detailed mapping information about utility pipelines located in the U.S., including data on “sensitive” areas through which pipelines pass (*e.g.*, areas that are sources of drinking water or are otherwise ecologically sensitive). The NRC’s responsibilities include the regulation of all nuclear power plants in this country. WLF argued that NNSA, OPS, and NRC had all failed to remove sensitive information from their websites that might prove useful to terrorists. In response to WLF’s petitions, each of the three agencies revised its Internet posting policies to take greater account of national security concerns. A similar petition filed with the Federal Energy Regulatory Commission (FERC) on March 25, 2005 led to similar changes in FERC policies regarding public access to documents.

E. Protecting Our Nation’s Borders

Preventing terrorist attacks within the United States requires the federal government to increase efforts to protect the nation’s border, in order to prevent terrorists and weapons from being smuggled into the country. WLF has regularly litigated in support of allowing increased law enforcement activity along the border, making it more difficult for terrorists and criminals to obtain false identification documents (such as driver licenses) and public benefits, and deporting aliens engaged in terrorism or other criminal behavior as quickly as possible. WLF also works to reduce the incentives for illegal aliens to sneak into this country; such efforts include reducing awards available to illegal aliens in lawsuits and reducing their ability to obtain public benefits.

Day v. Bond. On October 25, 2005, WLF filed a brief in the U.S. Court of Appeals for the Tenth Circuit in Denver, urging the court to reinstate a challenge to a Kansas statute that, WLF charges, violates the civil rights of U.S. citizens who live outside the State. The statute grants illegal aliens the right to attend Kansas universities at in-state rates but denies that same right to U.S. citizens who live outside of Kansas. WLF argued that the Kansas law violates a 1996 federal statute that prohibits States from granting more favorable tuition rates to illegal aliens than they grant to citizens. A federal district court dismissed the suit in 2005 on procedural grounds; WLF urged the appeals court to overturn that dismissal. WLF filed its brief on behalf of Brigitte Brennan, who attended and graduated from a Kansas high school and has been living for the past four years in Kansas while attending the University of Kansas. But Kansas has refused to offer her in-state tuition rates because she lived in Kansas City, Missouri while attending high school. The result is that she is paying considerably higher tuition than do illegal aliens who lived in Kansas illegally while attending high school and whose presence in this country continues to be illegal.

Balbuena v. IDR Realty LLC. On February 21, 2006, the New York Court of Appeals declined to bar illegal aliens who are plaintiffs in personal injury lawsuits from recovering wages lost as a result of their injuries. The decision was a setback for WLF, which filed a brief in the case, urging that such damages be barred. WLF argued that awarding illegal aliens the "lost" wages they would have earned if they had not been injured would be inequitable because it would have been illegal for them actually to have earned those wages by taking a job in this country. WLF argued that such awards are preempted by federal law because they undermine federal immigration policy by encouraging more illegal aliens to enter the country and to seek employment. The Court of Appeals rejected WLF's position, contending that to deny damages for lost wages would encourage employers to reap the economic benefits of hiring illegal aliens. This personal injury tort suit was filed by Gorgonio Balbuena, an illegal alien who was severely injured while performing construction work. Balbuena alleges that his injuries were caused by his employer's negligence. Balbuena's right to recover for his injuries and medical expenses was not challenged; but WLF challenged Balbuena's claim that he is entitled to recover the wages he could have earned in this country had he not been injured.

Paramount Citrus v. Superior Court. On January 5, 2006, the California Supreme Court declined to review a trial court decision that allows illegal aliens who file tort actions to seek recovery for damages not yet incurred and to base those damage claims on an assumption that they will remain in the United States for the remainder of their lives. The decision was a setback for WLF, which filed a brief urging the court to grant review. WLF argued that, because illegal aliens have no right to remain in this country, such damage claims should be limited to the amount of damages that would be incurred if the illegal alien returned to his native country. The case involves an illegal alien who was permanently disabled in a car accident. He seeks recovery of the cost of providing him "life care" for the next 50 years. The present value of such care is \$5.3 million if he remains in the United States, but only \$1.8 million if he returns to his native Mexico. WLF argued that because the plaintiff has no right

to remain in this country, he has no right to recover damages computed based on an assumption that he will remain here. WLF also argued that granting the plaintiffs' damage claims would undermine federal immigration policy.

Ambros-Marcial v. U.S. On July 13, 2005, a federal district court in Arizona held that immigrants rights groups should not be permitted to undermine border security measures by suing the federal government for failing to establish water stations in the Arizona desert. The decision was a victory for WLF, which filed a brief in the case arguing that although 100 or more aliens die in the Arizona desert from dehydration every year while attempting to cross the border illegally, making such crossing easier by establishing water stations would serve only to encourage more illegal immigration. The issue arose in connection with a lawsuit for damages filed by relatives of Mexicans who died in the desert. The district court agreed with WLF that the Federal Tort Claims Act does not grant the federal courts jurisdiction over tort claims based on "discretionary functions" of the federal government – such as a decision whether to install water stations.

Cubas v. Martinez. On October 11, 2005, WLF filed a brief in the Appellate Division of the New York Supreme Court, urging it to uphold new regulations adopted by the State of New York that make it extremely difficult for illegal aliens to obtain driver licenses. WLF argued that the restrictions are needed to ensure that terrorists and criminals do not obtain fake identification documents that can facilitate their activities. WLF urged the court to overturn a trial court's preliminary injunction against the new regulations adopted by New York's Department of Motor Vehicles (DMV). The regulations are intended to implement a statutory mandate that DMV issue licenses only to those who can adequately establish their "identity." In the past, criminals and terrorists have been able to obtain driver licenses under false names using forged identity documents. WLF argued that DMV's authority to demand proof of "identity" includes the right to adopt new rules designed to ensure that the driver license applicant is who he says he is. The regulations are not rendered invalid simply because they have the effect of preventing illegal aliens from obtaining licenses, WLF argued.

Foreign Cooperation with U.S. Deportation of Aliens. On March 25, 2005, WLF petitioned Secretary of State Condoleezza Rice, asking that the State Department take significant steps – including, where necessary, the imposition of economic sanctions – with regard to foreign governments that refuse to cooperate with U.S. deportations of their nationals. WLF noted that the absence of cooperation has rendered the U.S. incapable of removing thousands of aliens ordered deported because they have been convicted of violent crimes. WLF urged the Department to make explicit demands upon the governments involved. Where that does not bring cooperation, WLF urged the Department to impose sanctions, including sanctions under the power granted by the Immigration and Nationality Act to discontinue granting visas to countries that refuse to cooperate in the issuance of travel documents for purposes of repatriation of excluded aliens; and under the Immigration Act of 1990, which authorizes the Secretary of State to exclude aliens from designated countries for policy purposes.

Friendly House v. Napolitano. On August 9, 2005, the U.S. Court of Appeals for the Ninth Circuit upheld Proposition 200, an initiative adopted in November 2004 by Arizona voters and designed to deter illegal aliens from collecting welfare benefits. The decision was a victory for WLF, which represented PAN, the group that sponsored Proposition 200; that group intervened in the case as a defendant, to ensure that a vigorous defense was mounted. The group intervened because the Arizona Attorney General (along with virtually every other senior Arizona official) opposed Proposition 200, so there was some reason to suspect that he might mount a less-than-vigorous defense of the new law. The appeals court threw out the plaintiffs' challenge entirely; it agreed with WLF that the plaintiffs (mostly illegal aliens seeking welfare benefits) lacked "standing" to challenge the law. WLF's brief also argued that Arizona voters were well within their rights in adopting such measures. WLF argued that because federal law prohibits states from providing welfare benefits to illegal aliens, there can be no objection to taking steps to ensure that the prohibition is enforced. WLF argued that Proposition 200 is neither preempted by federal immigration law nor a violation of the due process rights of state employees or welfare applicants. WLF also represented PAN in the district court. WLF won a major victory in December 2004, when the district court denied the plaintiffs' request for a preliminary injunction against Proposition 200; the appeals court affirmed that victory.

Jama v. Immigration and Naturalization Service. On January 12, 2005, the U.S. Supreme Court held that the U.S. government is permitted to deport alien felons to Somalia. The decision was a victory for WLF, which filed a brief urging the Court to reject a lower court decision that prohibited deporting *anyone* to Somalia because that country lacks a functioning central government. The Court agreed with WLF that although the U.S. usually does not deport an alien when his native country objects to taking him back, federal law does *not* prohibit deportations to countries that lack a functioning government capable of formally accepting (or rejecting) its returning citizens. The issue is of critical importance in connection with alien felons from Somalia because Somalia has not had a functioning central government since 1991. There are now more than 8,000 aliens in this country awaiting deportation to Somalia, but a federal appeals court had issued an injunction blocking all such deportations. Most of those awaiting deportation, including several thousand convicted of serious crimes, are not in detention but rather are freely roaming the streets – because courts do not permit *indefinite* detention pending deportation. The Supreme Court agreed with WLF that deportation of these alien felons should be allowed to proceed.

U.S. v. Flores-Montano. March 30, 2004, the U.S. Supreme Court held that customs officials are permitted to conduct thorough inspections of all vehicles crossing the border into the United States, regardless whether they suspect that the vehicle contains contraband. The decision was a victory for WLF, which filed a brief in the case, arguing that such searches are essential to national security. The case involved the search of a car being driven into California by a Mexican citizen. Although they lacked solid evidence that the driver was engaged in smuggling, customs officials decided to remove and inspect the gas tank (a process that took less than an hour). The search turned up 37 kilograms of marijuana. The appeals

court threw out the evidence, ruling that the search was “unreasonable” in violation of the Fourth Amendment. In reversing, the Supreme Court agreed with WLF’s argument that the government should have far broader rights to conduct suspicionless searches at the border than elsewhere. WLF argued that terrorists, drug cartels, and immigrant smugglers cannot effectively be thwarted unless the government is permitted to conduct random searches of all entering vehicles.

United States v. Drayton. On June 17, 2002, the U.S. Supreme Court upheld the power of police to question and search bus passengers who voluntarily consent to be searched. The decision was a victory for WLF, which had filed a brief in the case in support of the police officers. The Court agreed with WLF that consensual questioning of citizens by police is an important law enforcement tool and should not be deemed to violate the Fourth Amendment’s ban on unreasonable searches and seizures simply because some bus passengers might feel uncomfortable in refusing a police request to search baggage. WLF argued that in light of terrorism threats, it is particularly important that police have all the tools necessary to ensure that public transportation systems remain safe. The case involved a police search of bus passengers in Florida who were found to be carrying nearly a kilogram of cocaine. The lower court had held that the search could not be deemed consensual in the absence of a *Miranda*-like warning that passengers had the right to refuse to consent to the search.

In-State Tuition for Illegal Aliens. On August 9, 2005, WLF filed a formal complaint with the U.S. Department of Homeland Security (DHS) against the State of Texas, charging that Texas is violating the civil rights of U.S. citizens who live outside the State. WLF filed a similar complaint against New York State on September 7, 2005. WLF charged that Texas and New York are violating federal law by offering in-state college tuition rates to illegal aliens who live in those states, while denying those same rates to U.S. citizens who do not live in those states. WLF called on DHS to bring appropriate enforcement action against Texas and New York, including ordering them to make refunds to students who have been charged excessive tuition. The federal statute at issue, 8 U.S.C. § 1623, was adopted in 1996 and is designed to ensure that any State that offers discounted, in-state tuition rates to illegal aliens on the basis of their residence in the State must offer the same discounted rates to *all* U.S. citizens. In 2001-02, Texas and New York adopted laws that allow illegal aliens to attend public universities at in-state rates, but they have refused to extend that same opportunity to U.S. citizens living outside the states. Similar laws have since been adopted in seven other States: California, Utah, Illinois, Washington, Oklahoma, Kansas, and New Mexico.

F. Protecting Military Activities from Environmental Restrictions

The nation’s military preparedness is regularly being undermined by court decisions that expansively apply federal environmental laws in ways – never intended by Congress – that prevent the military from engaging in routine training exercises. WLF recognizes that environmental laws apply to everyone, including the government; but federal courts should not

be permitted to invoke environmental laws in a manner that second-guesses the military's considered judgments regarding military needs. WLF regularly litigates against activists who seek to use environmental laws to hamstring the military.

National Audubon Society v. Dep't of the Navy. On September 7, 2005, the U.S. Court of Appeals for the Fourth Circuit in Richmond ruled that the Navy should be permitted to go forward with planning for construction of a new North Carolina airfield, even as it prepares a new environmental impact statement (EIS) for the airfield. The decision was a victory for WLF, which had filed a brief urging the court to lift a district-court injunction against all site-preparation and planning work. The airfield, desperately needed for pilots being trained to land planes on aircraft carriers, has been blocked by questions over the adequacy of the initial EIS. The appeals court held that a new EIS was required. But it agreed with WLF that the district court erred in blocking all work on the airfield while the new EIS is being prepared. The appeals court agreed with WLF that the district judge acted improperly in second-guessing the Navy's determination that building the base is vital for national security.

Center for Biological Diversity v. England. On January 24, 2003, the U.S. Court of Appeals for the D.C. Circuit overturned a lower court decision that had blocked Navy military training exercises. The decision was a victory for WLF, which had filed a brief seeking to overturn a dangerous district court decision. The Center for Biological Diversity (CBD) sued the Department of the Navy to halt all live-fire training exercises on the small uninhabited Pacific island of Farallon de Medinilla (FDM). CBD claimed that the bombing of the island resulted in the unintentional killing of a several *unendangered* migratory sea birds listed under the Migratory Bird Treaty Act (MBTA). The district judge issued, in effect, a "cease-fire" order against the Navy, halting the training exercises even though the Navy had taken costly measures to mitigate any environmental harm. WLF argued in its brief that the CBD lacked legal standing to challenge the military exercises because the alleged injury to its members' bird-watching activity was too speculative. WLF also argued that if the MBTA were applied to the facts in this case, it would unconstitutionally encroach on the President's Commander in Chief power under Article II of the Constitution. While the case was on appeal, Congress enacted a law that exempted military training exercises from the MBTA, whereupon the case was dismissed as moot.

Application of Environmental Rules to Combat Training Exercises. On August 2, 2004, WLF filed comments with the U.S. Fish & Wildlife Service (F&WS) regarding a proposed rule that purports to govern any Department of Defense combat training exercises that may have an adverse effect on migratory birds. WLF supported a provision in the proposed rule that would allow DoD, rather than F&WS, to determine whether proposed military activity is likely to have a "significant adverse effect" on migratory birds. However, WLF objected to the proposed rules on suspension and withdrawal of a DoD's "take" authorization (*i.e.*, authorization to engage in activity that could harm migratory birds) because the proposed rules state that F&WS may *unilaterally* suspend DoD's authorization. WLF argued that Congress (in adopting the 2003 National Defense Authorization Act) mandated that

“take” authorizations not be suspended or withdrawn over DoD’s objections, and also argued that such unilateral action would infringe on the President’s Commander-in-Chief powers under Article II of the Constitution.

G. Opposing Application of Foreign Law in U.S. Courts

The U.S. Constitution mandates that U.S. courts are to look for guidance to U.S. law, not foreign law. Nonetheless, activists are with increasing frequency urging courts to decide cases on the basis of foreign or international law, and some judges are agreeing to do so. WLF strongly opposes this trend as an affront to American sovereignty and a threat to national security. It regularly litigates in opposition to efforts to have cases decided on the basis of foreign/international law. Activists have sought to invoke international law in each of the “enemy combatant” cases listed above. Other cases in which WLF has opposed this trend are listed here.

Abdullahi v. Pfizer. On May 24, 2006, WLF filed a brief in the U.S. Court of Appeals for the Second Circuit, urging the court to dismiss claims that a pharmaceutical company violated international law when a team of its doctors provided emergency medical aid to children in Nigeria suffering from meningitis. WLF argued that federal law does not permit private parties to file tort suits in federal court asserting that doctors violated international law by allegedly treating patients without first obtaining the patients’ informed consent. WLF urged the court to reject claims that such suits are authorized by the Alien Tort Statute (ATS), a 1789 law that lay dormant for nearly 200 years before activists began seeking to invoke it in the past several decades. WLF argued that the ATS was adopted in 1789 to allow the federal courts to hear cases involving piracy and assaults on ambassadors. WLF charged that it has been transformed by activist attorneys into a tool for second-guessing American foreign policy and for attacking the overseas conduct of corporations. In this case, Pfizer sent a team of doctors to Kano, Nigeria in 1996 to provide *pro bono* medical care to assist in dealing with a severe outbreak of meningitis in children. The doctors treated their patients with Trovan, a Pfizer-manufactured antibiotic that had not yet been approved by FDA for treating pediatric meningitis in the United States. The children treated by the Pfizer doctors had a survival rate superior to that of other Nigerian children receiving treatment. Nonetheless, lawyers from Milberg Weiss (a well-known New York plaintiffs’ law firm) filed suit against Pfizer on behalf of some of the patients and their parents, alleging that Pfizer had failed to inform them, prior to commencing treatment, that Trovan was not yet fully approved by FDA. The plaintiffs claim that Pfizer’s alleged failure to obtain informed consent violated international law and is actionable in U.S. federal courts under the ATS.

Medellin v. Dretke. On May 23, 2005, the U.S. Supreme Court dismissed as improvidently granted a case in which a criminal defendant, properly convicted of murder and sentenced to death, was attempting to invoke international law as a basis for overturning his conviction. The decision was a victory for WLF, which filed a brief on behalf of the parents

of one of the murder victims, 14-year-old Jenny Ertman. WLF argued that Jose Medellin, a Mexican citizen convicted of raping and murdering two teenage girls in 1993, has received more than a fair review of his sentence and that it is time now to bring his appeal rights to a close. Medellin, who has lived in Houston most of his life, argued that his conviction should be overturned because Texas erred when, at the time of his arrest, it failed to advise him of his rights under international law to meet with a Mexican consular official. In its brief filed in support of Texas, WLF argued that only American law, not international law, is enforceable in U.S. courts. Following the Supreme Court's dismissal of his case, Medellin is now asking (with the support of the Bush Administration) that Texas state courts consider his international law claim. WLF has pledged to continue to support the parents' interests in bringing Medellin's appeals to a close.

Sosa v. Alvarez-Machain. On June 29, 2004, the U.S. Supreme Court unanimously overturned a lower-court ruling that allowed aliens to second-guess American law enforcement policy by filing suits for money damages under the Alien Tort Statute (ATS), alleging violations of international law. The decision was a major victory for WLF, which filed a brief in the case. The lower court had affirmed an award of damages imposed against Sosa, a former Mexican policeman, because, at the request of the U.S. government, he assisted the U.S. in apprehending a Mexican doctor indicted for torturing and murdering an American drug enforcement agent. In response to the doctor's civil suit, the appeals court ordered Sosa to pay \$25,000 in damages for a supposed violation of international law. The appeals court held that the ATS, a 1789 statute designed to deal with piracy issues, permits foreigners to sue in U.S. courts for alleged violations of international law. The Supreme Court agreed with WLF not only that Sosa's conduct did not violate international law, but also that the ATS does not authorize suits in the federal courts to enforce international law.

Doe v. Unocal Corporation. On April 22, 2003, WLF filed a brief in the U.S. Court of Appeals for the Ninth Circuit, seeking to overturn a lower court ruling that greatly expanded the reach of the Alien Tort Statute (ATS). The ATS provides for jurisdiction in U.S. courts by aliens for torts "committed in violation of the law of nations or a treaty of the United States." Although the law originally was intended to govern relations between nation states when enacted in 1789, human rights activists are now invoking the law to hold U.S. corporations operating abroad liable for human rights abuses allegedly suffered by citizens of the host country. In this case, the aliens claimed that injuries they suffered at the hands of the Myanmar military should be attributed to Unocal Corp. because the military was protecting an oil pipeline being built by Unocal. Following the Supreme Court's *Sosa* decision (see above), which greatly cut back on liability under the ATS, the parties settled this case before the appeals court could issue a decision.

H. Enhancing Homeland Security

Ever since September 11, 2001, governments at all levels have been implementing new

programs to enhance homeland security by tracking and deterring potential terrorists. Unfortunately, a wide variety of activist groups have gone to court repeatedly in an effort to block virtually all such programs. WLF has responded by joining the judicial battle in support of these vital security measures.

Humanitarian Law Project v. Gonzales. On April 13, 2006, WLF filed a brief in the U.S. Court of Appeals for the Ninth Circuit in San Francisco, urging the court to uphold a portion of the USA PATRIOT Act that makes it a crime to provide “material support” to any group that has been designated by the Attorney General as a “foreign terrorist organization.” WLF argued that the statute is not impermissibly vague and does not violate the First Amendment rights of individuals who wish to support humanitarian work conducted by terrorist groups. WLF also argued that the First Amendment does not prevent Congress from barring actions taken to aid terrorist groups simply because the actions may have an expressive component. The law in question, 18 U.S.C. § 2339B, was adopted in 1996 and was strengthened by the USA Patriot Act in 2001 and by other legislation in 2004. WLF argued that § 2339B is not impermissibly vague (in violation of the Fifth Amendment’s Due Process Clause) because it provides people of ordinary intelligence with a reasonable opportunity to understand what conduct it prohibits. WLF argued that Congress’s intent was clear: to bar virtually all significant direct support of designated terrorist groups. WLF argued that the plaintiffs’ real objection is that they disagree with Congress’s decision, not that Congress has failed to specify what actions are prohibited.

MacWade v. Kelly. On April 4, 2006, WLF filed a brief in the U.S. Court of Appeals for the Second Circuit to preserve the victory it won in the district court that upheld the right of New York City’s police to search bags on subways to deter possible terrorist activity. WLF’s victory occurred on December 2, 2005, when the district court rejected the New York Civil Liberties Union’s (NYCLU) challenge to the constitutionality of the bag inspection program. The program, implemented shortly after the London terrorist subway bombings in the summer of 2005, is designed to detect and deter would-be terrorists who would bring explosive devices aboard the subway system. WLF filed two briefs in the case on behalf of its clients, the second one following the two-day trial that began on October 31, 2005, at the specific request of the presiding judge and over the objections of the NYCLU. The judge agreed with WLF that the inspection program does not violate the Fourth Amendment’s prohibition against unreasonable searches and seizures.

ACLU v. National Security Agency; Center for Constitutional Rights v. Bush. On May 30, 2006, WLF filed a brief in the U.S. District Court for the Eastern District of Michigan, opposing a lawsuit filed by the ACLU that challenges electronic surveillance by the National Security Agency (NSA) of international communications to which one of the parties is a suspected al Qaeda agent or affiliate. On June 6, 2006, WLF filed a similar brief in New York federal court in a related case filed by the Center for Constitutional Rights (CCR). In *ACLU v. NSA* and *CCR v. Bush*, the activist groups claim that the NSA surveillance program, which is conducted without court order, violates the Foreign Intelligence Surveillance Act of

1978 (FISA). FISA requires that government surveillance be approved by a special FISA court, based on a showing that there is probable cause to believe that the targeted person is an agent of a foreign power. However, after the terrorist attacks on the United States on September 11, 2001, the President authorized the collection of international communications without court order where there is reasonable belief that one of the parties to the call is an al Qaeda agent or affiliated with al Qaeda or other terrorist organization. In its brief, WLF argued that FISA itself is unconstitutional because it violates the separation of powers by purporting to impair the President's ability to carry out his constitutional responsibilities to defend the country from further attack and to collect foreign intelligence. WLF also argued that the surveillance activities do not violate the Fourth Amendment prohibition against unreasonable searches.

II. CIVIC COMMUNICATIONS PROGRAM

WLF recognizes that its litigation and regulatory activities cannot alone suffice if it is to have a significant impact in opposing the efforts of activists and in educating the public and policy makers regarding threats to national security. WLF has also sought to influence public debate and provide information through its Civic Communications Program. This targeted and broad-based program includes WLF's sponsorship of frequent, well-attended media briefings featuring experts on a wide range of national security-related topics; the publication of advocacy advertisements in national journals and newspapers; and participation in countless national security-related symposia. WLF supplements these efforts by making its attorneys available on a regular basis to members of the news media – from reporters for general-circulation newspapers to writers for specialized legal journals.

A. Media Briefings

The centerpiece of WLF's Civic Communications Program is its media briefings, which bring news reporters from the print and electronic media together with leading experts on a wide variety of legal topics. WLF sponsors more than a dozen such breakfast briefings each year, often focusing on national security topics. Recent media briefings (dubbed media "noshes") on national security-related issues have included the following:

Terrorism Risk Insurance: Assessing Public & Private Roles as TRIA Nears its Sunset,
September 15, 2005

- **Warren W. Heck**, Greater New York Mutual Insurance Company
- **Travis B. Plunkett**, Consumer Federation of America
- **Commissioner Lawrence H. Mirel**, Dept. Of Insurance, Banking & Securities

The PATRIOT Act and Beyond: Is America's War On Terrorism Compromising Civil Liberties?, September 25, 2003

- Hon. Daniel J. Bryant, Acting Assistant Attorney General
- Stuart Taylor, Jr., National Journal
- Timothy Edgar, American Civil Liberties Union

Assault on Terror or Liberties?: Assessing the Administration's Legal Strategy, One Year Later, September 19, 2002

- Professor Ruth Wedgwood, Yale Law School
- Professor Jonathan Turley, George Washington University Law School
- Lee A. Casey, Baker & Hostetler

Practicing Law after September 11th: New Rules and Strategies for Lawyers and the Corporate World, January 16, 2002

- The Honorable Dick Thornburgh, Kirkpatrick & Lockhart, LLP (moderator)
- The Honorable Ed Bethune, Bracewell & Patterson, L.L.P.
- Thomas F. Cullen, Jones, Day, Reavis & Pogue
- Joseph E. diGenova, diGenova & Toensing
- Richard S. Levick, Esq., Levick Strategic Communications, Inc.

Implementing The New Anti-Terror Law: What Impact on Law Enforcement and Civil Liberties?, November 14, 2001

- The Honorable Viet D. Dinh, Assistant Attorney General of the United States
- George J. Terwilliger III, White & Case
- Victoria Toensing, diGenova & Toensing
- Ronald Weich, Zuckerman Spaeder LLP

The War on Terrorism: Risks and Rewards of Relying upon Criminal and International Law Principles, October 19, 2001

- The Honorable Dick Thornburgh, Kirkpatrick & Lockhart, LLP (moderator)
- Philip Allen Lacovara, Mayer, Brown & Platt
- Professor Ruth Wedgwood, Yale Law School
- Michael J. O'Neill, Preston Gates & Ellis

B. Advocacy Ads

In 1998, WLF began running a series of opinion editorials on the op-ed page of the national edition of The New York Times called "In All Fairness." The op-ed has appeared well over 100 times, reaching over five million readers in 70 major markets and 90 percent of major newspaper editors. Titles and summaries of the op-eds published since September 11, 2001, relating to terrorism issues, include:

Defending Our Own Civil Liberties

The September 11, 2001 attack on America was caused in large measure by the restrictions placed on our domestic and foreign intelligence gathering capabilities.

Wanted: Public Interest Reality

Lawsuits by activists to block military training exercises, energy development, and economic growth, sacrifice national interests in favor of their narrow ideological agendas.

Holiday Wishes

Attacks on the Administration's efforts to combat terrorism by so-called "civil libertarians" are misguided.

Tampering With Our Lives

Activist groups opposing homeland security efforts and the war on terrorism threaten the safety of all Americans.

Hijacking Liberties

Activists who attack law enforcement efforts to gather intelligence and instead seek to provide civil liberties protections to terrorists and their supporters harm our national security.

Mirandize Our Foreign Enemies?

Efforts to extend civil liberties protections to suspected terrorists hamper our ability to combat terrorism and threaten our safety.

No Blood For Oil

United States security requires less dependence on foreign oil and more development of domestic energy resources.

Unwittingly Aiding Al-Qaeda

Activists who seek repeal of USA PATRIOT Act's anti-terrorism provisions and tough enforcement are ill-informed and help our enemies.

The State of Our Union

Efforts to combat terrorism are under constant attack by misguided activists who use the courts to undermine our national security.

"Civil Liberties" for Terrorists?

Activists are harming American interests by opposing major military activities overseas and domestic law enforcement efforts to fight the war on terrorism.

Fueling National Insecurity

Energy development in America has been unnecessarily limited by activists and overly restrictive regulations.

National Security and Energy

American dependence on foreign oil is the result of activists' efforts to prohibit domestic exploration and production.

C. Public Appearances

WLF attorneys have appeared as featured panelists and speakers on national security issues before a wide variety of groups, and are frequently sought out by the electronic news media for interviews on national security issues coming before the courts. Public appearances made by WLF attorneys relating to national security issues, dating back to September 11, 2001, include:

2006

- * June 29, WLF Chief Counsel Richard Samp was interviewed regarding the Supreme Court's decision in *Hamdan v. Rumsfeld* (which struck down the Bush Administration's plan to try alleged al Qaeda war criminals before military tribunals) by Fox News, ABC-Radio, CBS-Radio, NPR's "To the Point," Voice of America, and Court TV.
- * June 21, Samp was interviewed on National Public Radio's nationally syndicated "Fresh Air" program, regarding the propriety of continued detention of "enemy combatants" at Guantanamo Bay, Cuba.
- * April 4, Samp was interviewed on WBGO-Radio in Newark, New Jersey regarding a recent court decision that held that illegal immigrants who are injured on the job are entitled to recover damages for lost wages – even though they would have had no right to continue to work in this country if they had not been injured.
- * March 27, Samp participated in a debate, sponsored by the Cato Institute, against Charles Swift, the military attorney for Salim Hamdan, who faces a war crimes trial for his work as an aide to Osama bin Laden. Hamdan's challenge to the military tribunal process was being argued before the Supreme Court the next day. The debate, which was broadcast on C-SPAN, addressed whether the President has the authority to establish military tribunals to try war crimes suspects.
- * March 2, Samp was interviewed on Radio Free Europe regarding U.S. immigration policy.

2005

- * September 19, Samp was interviewed on KFI-Radio in Los Angeles regarding New

York State's policy of granting in-state tuition rates to illegal aliens attending New York colleges, while denying those same rates to U.S. citizens living outside the State. Samp was interviewed on that same topic on Bloomberg Radio on October 21.

- * September 19, Samp was a guest on the Kojo Nnamde Show on WAMU-Radio in Washington, D.C., discussing the U.S. military's detention of al Qaeda suspects at Guantanamo Bay, Cuba. Samp debated David Remes, a lawyer representing some of those detainees.
- * August 24, Samp was interviewed on WBAL-Radio in Baltimore regarding Texas's policy of granting in-state tuition rates to illegal aliens attending Texas colleges, while denying those same rates to U.S. citizens living outside the State. WLF was interviewed on the same subject on KLBK-Radio in Austin (Aug. 24), KTSA-Radio in San Antonio (Aug. 24), and KLIF-Radio in Dallas (Aug. 25).
- * August 12, WLF Senior Executive Counsel Paul Kamenar was interviewed on KVT National Public Radio in Austin, Texas discussing WLF's petition challenging Texas's policy of granting in-state tuition to illegal aliens attending Texas colleges while denying those same lower rates to U.S. citizens living outside of the State.
- * August 9, Samp was interviewed on National Public Radio regarding a lawsuit filed against top Bush Administration officials by a suspected al Qaeda terrorist; the suspect contends that he has been tortured while in U.S. custody.
- * July 18, Samp was interviewed on the Chris Core Show on WMAL-Radio in Washington, D.C. regarding the military's decision to detain Jose Padilla, an American citizen accused of plotting with al Qaeda to blow up an American city; and regarding a recent court decision upholding his detention.
- * May 23, Samp was interviewed on CBS Radio regarding the Supreme Court's decision in *Medellin v. Dretke*, a case in which a Texas prisoner is attempting to invoke international law to overturn his death sentence.
- * May 16, Samp participated in a debate in Philadelphia, broadcast nationally on National Public Radio, regarding the U.S. military's detention of enemy combatants at Guantanamo Bay, Cuba. Samp debated against Thomas Wilner, an attorney representing many of the detainees.
- * April 26, Kamenar was a featured guest on the FOX News "Big Story," hosted by Judge Andrew Napolitano. Kamenar discussed *Acree v. Iraq*, in which WLF is representing Senator George Allen and a bipartisan group of congressmen supporting a lawsuit by ex-POWs from the Gulf War suing Iraq and Saddam Hussein for torture.

- * March 28, Samp was interviewed on CNN regarding *Medellin v. Dretke*, a Supreme Court case in which a convicted murderer is invoking international law in an effort to avoid execution.
- * March 23, Samp was interviewed by Voice of America on the case of Jose Padilla, the alleged "dirty bomber" being held by the government as an enemy combatant.
- * March 3, Samp was interviewed on NBC-TV Nightly News regarding *Clark v. Martinez*, the case in which the Supreme Court ordered the release of Mariel Cubans who have been convicted of violent crimes but cannot be deported back to Cuba.
- * January 31, Samp was interviewed on CNN regarding lawsuits filed by foreigners being held at Guantanamo Bay, Cuba as "enemy combatants." Samp was also interviewed on January 31 by KLIFF-Radio in Houston and on February 7 by KPCC-Radio in Denver on the same topic.

2004

- * November 9, 2004, Samp was interviewed on Voice of America regarding *Hamdan v. Rumsfeld*, a challenge to the Administration's plan to try alleged al Qaeda war criminals before military commissions.
- * October 19, Samp was interviewed on KPCC-Radio in Los Angeles regarding anti-terrorism measures enacted as part of the USA PATRIOT Act.
- * June 3, Samp was interviewed by Azteca America, a Spanish-language television network, regarding detention of American citizens as "enemy combatants."
- * May 25, Glenn Lammi, Chief Counsel of WLF's Legal Studies Division, discussed energy policy and the war on terrorism on the Pat Whitely Show, WRKO, Boston.
- * May 17, Samp was interviewed on Fox News regarding pending lawsuits designed to force the U.S. government to build water stations in the Arizona desert to assist illegal aliens attempting to sneak into the country. Samp was interviewed on the same subject on Fox News' "The O'Reilly Factor" on June 9, and on WSBA-Radio in York, Pennsylvania on May 18.
- * May 14, Samp was interviewed by Medill News Service (whose broadcasts are carried by numerous cable television companies) regarding the propriety of the federal government's detention of enemy combatants.
- * April 29, WLF co-sponsored a briefing in Boston with Kirkpatrick & Lockhart LLP on "Homeland Security-Venture Capital Investment and Business Opportunities."

- * April 12, Samp was interviewed on ABC-Radio regarding national security cases pending in the U.S. Supreme Court.
- * March 3, Kamenar was the moderator at a seminar co-hosted by WLF, Kirkpatrick & Lockhart, and the Bureau of National Affairs (BNA) on legal and business issues involving Homeland Security. Other speakers included Joseph Whitley, General Counsel of the Department of Homeland Security; and U.S. Senator Pat Roberts, Chairman of the Senate Select Committee on Intelligence.
- * February 24, Samp was interviewed on CBS Radio regarding *U.S. v. Flores-Montano*, a Supreme Court case that addressed constitutional limitations on the federal government's power to inspect vehicles entering the country.
- * January 26, Samp was interviewed on CBS Radio regarding *Sosa v. Alvarez-Machain*, a Supreme Court case that addressed whether individuals may sue in federal court for alleged violations of international law.
- * January 7, Kamenar was interviewed by Voice of America regarding capital punishment for terrorists and the refusal to extradite suspects by European countries which oppose the death penalty.

2003

- * December 18-22, Samp was interviewed on NBC-TV, ABC-Radio, NPR, and Democracy Now Radio Network on the court of appeals's decision in *Padilla v. Rumsfeld* regarding the detention of a suspected terrorist.
- * September 12, Samp debated ACLU's Nadine Stroessen on CNBC on the USA PATRIOT Act and its enforcement.
- * April 30, Samp appeared on CNBC's Buchanan & Press Show to discuss *Demore v. Kim*, a case that addressed the government's authority to detain alien felons pending completion of deportation proceedings.
- * April 11, Samp was interviewed on CBC (Canadian television) on the *Rasul v. Bush* case involving detainees at Guantanamo Bay, Cuba.
- * April 7, Kamenar debated Art Spitzer, Director of the ACLU's Washington, D.C. office, on "National Security and Civil Liberties" at a conference in Washington, D.C., sponsored by Panim el Panim for Jewish students from around the country.
- * January 14, Samp discussed *Demore v. Kim* on National Public Radio.

27

2002

- * December 6, Kamenar was the featured luncheon speaker before a group of 40 editorial page editors of major newspapers. The editors were attending a conference sponsored by the University of Maryland's Knight Journalism Center. The topic of the conference and Kamenar's remarks was "Civil Liberties in the Age of Terrorism."
- * November 17, Samp spoke to the annual meeting of the Jewish Institute for National Security Affairs regarding WLF's efforts in the courts to defend the Bush Administration's war on terrorism.
- * October 8, Samp spoke to a group of senior citizens visiting Washington under the auspices of the Close-Up Foundation, on legal challenges faced by the federal government in connection with the war on terrorism.
- * September 12, Kamenar was a featured panelist at the Annual Symposium of the American Society of Access Professionals, an organization composed of government officials in charge of handling Freedom of Information Act requests. Kamenar discussed pending litigation involving the disclosure of the identities of aliens detained since the terrorist attack of September 11.
- * August 15, Kamenar was a featured guest commentator on National Public Radio's "All Things Considered," discussing the ACLU lawsuit demanding the release of the names of aliens detained since September 11, 2001.
- * January 16, Samp was interviewed by ABC Radio on the upcoming trial of John Walker Lindh, the accused American Taliban.

2001

- * December 31, Samp was interviewed on WLAC-Radio in Nashville on the Justice Department's plans to monitor conversations between suspected terrorists and their attorneys.
- * December 21, Kamenar was a guest on CNBC television along with Newsweek reporter Michael Isakoff discussing the legal ramifications of prosecuting John Walker Lindh, the U.S. citizen captured for fighting with the Taliban.
- * December 19, Kamenar was a guest on CNN television discussing the legality of military tribunals and alien detention proceedings.

- * December 18, Kamenar was the featured guest on the award-winning Northern Virginia cable show "Law Weekly" hosted by noted attorney Glenn Lewis. The topic was the legality of military tribunals.
- * December 17, Kamenar was the featured guest on the hour-long Tom Clark show aired by Wisconsin National Public Radio discussing the legality of anti-terrorism measures.
- * December 7, Lammi discussed civil liberties and national securities issues on the "Ray Flynn Show" on WROL-Radio in Boston.
- * December 6, Samp appeared on C-SPAN's Washington Journal, a half-hour call-in show, to discuss the Bush Administration's anti-terrorism measures, as well as on National Public Radio and Fox News Channel with a leading critic of Administration policy.
- * November 16, Kamenar was a guest on National Public Radio along with ACLU President Nadine Strossen and Dean Doug Kmiec of Catholic University Law School discussing the legality of military tribunals.
- * November 9, Samp appeared on CNN to discuss federal government plans to monitor conversations between imprisoned terrorism suspects and their attorneys. Samp was interviewed on the same subject on Talk-Radio News Service.
- * November 8, Samp was interviewed on WFM-Radio in Tampa regarding government detention of illegal aliens suspected of terrorism.
- * September 25, Lammi debated Harvard Law School's Alan Dershowitz on civil liberties and national security on CNN's "Talkback Live."

III. PUBLICATIONS

WLF's Legal Studies Division is the preeminent publisher of persuasive, expertly researched, and highly respected legal papers. WLF publishes in seven different formats, which range in length from concise LEGAL BACKGROUNDEERS covering current developments affecting the American legal system, to comprehensive Monographs providing law-review-length inquiries into significant legal issues.

Since its inception fifteen years ago, WLF's Legal Studies Division has produced a library of publications of considerable size and depth. The publications explore a wide-variety of legal topics. Since the 9/11 terrorist attacks, a significant number of WLF's publications have focused on national security issues. Notable WLF authors on national security issues

include: former Attorney General **Richard Thornburgh**, University of Virginia Law Professor **John Norton Moore**, and former Deputy Solicitor General **Philip Lacovara**.

Activist Suits Challenging Terrorist Surveillance Should Be Dismissed

By **Andrew C. McCarthy**, the head of the Center for Law and Counterterrorism at the Foundation for the Defense of Democracies.

LEGAL BACKGROUNDER, June 2, 2006, 4 pages

Congress Enacts Substantial Liability Protections For Public Health Emergencies

By **John M. Clerici**, a partner with the law firm McKenna Long & Aldridge LLP in its government contracts practice and government affairs group; **Frank M. Rapoport**, also a partner and focuses on government contracts, information technology, federal litigation and public health law; and **Douglas B. Farry**, a Managing Director in the firm's Government Affairs practice.

LEGAL OPINION LETTER, February 10, 2006, 2 pages

***Hamdan v. Rumsfeld*: High Court Should Uphold Executive Wartime Powers**

By **Andrew C. McCarthy**, a Senior Fellow at the Foundation for Defense of Democracies.

LEGAL OPINION LETTER, December 16, 2005, 2 pages

Federal Role Essential For Terrorism Risk Insurance

By **John T. Leonard**, President and CEO of Maine Employers' Mutual Insurance Company (MEMIC) and MEMIC Indemnity Company of New Hampshire.

LEGAL BACKGROUNDER, October 7, 2005, 4 pages

Ruling Expands Judiciary's Role In Transfer of Terror Detainees

By **Robert Chesney**, Associate Professor of Law at Wake Forest University School of Law.

LEGAL BACKGROUNDER, August 26, 2005, 4 pages

Military Commissions For Terrorists On Solid Constitutional Grounds

By **Bradford A. Berenson**, who served as Associate Counsel to President George W. Bush from January 2001 through January, 2003 and is currently a partner with the law firm Sidley Austin Brown & Wood LLP, and **Christian M.L. Bonat**, an associate at Sidley Austin Brown & Wood LLP.

LEGAL BACKGROUNDER, September 17, 2004, 4 pages

Deciding The Rules For Detainees: Wars Are Not Criminal Prosecutions

By **George M. Kraw**, a partner in the San Jose, California law firm Kraw & Kraw.

LEGAL OPINION LETTER, March 19, 2004, 2 pages

Foreign "War Crimes" Lawsuits Against American Soldiers Threaten National Security
By **Margaret D. Stock**, Assistant Professor, Department of Law, United States Military Academy, West Point, New York.

LEGAL BACKGROUNDER, August 22, 2003, 4 pages

Courts, Military Detainees, And The War On 21st Century Terrorism

By **George M. Kraw**, a partner in the San Jose, California law firm Kraw & Kraw.

LEGAL OPINION LETTER, May 9, 2003, 2 pages

President Has Clear Authority To Designate Detainees As "Enemy Combatants"

By **Robert L. Siriani, Jr.**, a Fall 2002 student in the Washington Legal Foundation's Economic Freedom Clinic at the George Mason University School of Law.

LEGAL BACKGROUNDER, March 2003, 4 pages

No Absolute Right To Open Deportation Hearings

By **John Williams**, a Fall 2002 student in the Washington Legal Foundation's Economic Freedom Clinic at the George Mason University School of Law.

LEGAL BACKGROUNDER, March 2003, 4 pages

Court Should Uphold Citizenship Requirement For Airport Security Screeners

By **S. Alexander Fiske**, a Fall 2002 student in the Washington Legal Foundation's Economic Freedom Clinic at the George Mason University School of Law.

LEGAL BACKGROUNDER, March 2003, 4 pages

Vaccine Liability Law Clarification Protects Lives And Resources

By **Victor E. Schwartz**, chairman of the Public Policy Group at the law firm Shook, Hardy & Bacon L.L.P., and **Leah Lorber**, of counsel to the firm.

LEGAL BACKGROUNDER, January 10, 2003, 4 pages

Courts Must Respect President's Authority In Times Of War

By **George M. Kraw**, a partner in the San Jose, California law firm Kraw & Kraw.

LEGAL OPINION LETTER, September 6, 2002, 2 pages

Chemical Risk Data Remains Dangerously Available To The Public

By **Emily Cochran**, Institute for Human Studies Fellow at the Washington Legal Foundation.

LEGAL BACKGROUNDER, August 23, 2002, 4 pages

Courts Must Not Meddle In Military Detainment Decisions

By **George M. Kraw**, a partner in the San Jose, California law firm Kraw & Kraw.

LEGAL OPINION LETTER, June 7, 2002, 2 pages

Flaws Undermine Use Of Alien Terrorist Removal Court

By **Steven R. Valentine**, a partner in the law firm Preston Gates Ellis & Rouvelas Meeds LLP, Washington, D.C.

LEGAL BACKGROUNDER, February 22, 2002, 4 pages

Securing Personal Information Key To Anti-Terror Efforts

By **Barnaby Zall**, Of Counsel to the law firm of Weinberg & Jacobs, LLP, in Rockville, Maryland.

LEGAL BACKGROUNDER, January 11, 2002, 4 pages

"Anticipatory" Self-Defense Against Terrorism Is Legal

By **Lee A. Casey** and **David B. Rivkin, Jr.**, partners in the Washington, D.C. office of the law firm Baker & Hostetler.

LEGAL OPINION LETTER, December 14, 2001, 2 pages

Court Should Dismiss Activists' Misguided Missile Defense Suit

By **David A. Codevilla**, an attorney in the Environmental Group in the Washington, D.C. office of the law firm Kirkland & Ellis.

LEGAL OPINION LETTER, December 14, 2001, 2 pages

What Role For The United Nations In Responding To Terrorism?

By **The Honorable Richard Thornburgh**, Counsel to the law firm Kirkpatrick & Lockhart LLP, who previously served as Under-Secretary-General of the United Nations, U.S. Attorney General, and Governor of Pennsylvania.

LEGAL BACKGROUNDER, November 6, 2001, 4 pages

Courts Should Uphold Detention Of Aliens Accused Of Terrorist Acts

By **Richard A. Samp**, Washington Legal Foundation's Chief Counsel.

LEGAL OPINION LETTER, October 19, 2001, 2 pages

U.S. And International Laws Support Our War On Terrorism

By **Professor John Norton Moore**, Director of the Center for National Security Law at the University of Virginia and former Counselor on International Law to the Department of State.

LEGAL OPINION LETTER, October 19, 2001, 2 pages

Criminal Or Military Justice For Captured Terrorists?

By **Philip Allen Lacovara**, a partner with the law firm Mayer, Brown, Rowe & Maw, LLP in New York City and a former Deputy Solicitor General of the United States.

LEGAL BACKGROUNDER, October 5, 2001, 4 pages

Publications

WASHINGTON LEGAL FOUNDATION
Legal Studies Division

Legal Policy Advisory Board

CHAIRMAN OF THE BOARD

The Honorable Dick Thornburgh
Kirkpatrick & Lockhart Nicholson
Graham LLP
Washington, D.C.

CHAIRMAN EMERITUS

Frank J. Fahrenkopf, Jr., Esq.
Hogan & Hartson LLP

The Honorable Richard K. Willard

BOARD MEMBERS

Joseph A. Artabane, Esq.
Artabane & Belden, P.C.

Mary Azcuenaga, Esq.
Heller Ehrman White & McAuliffe

Professor Thomas E. Baker
Florida International University
College of Law

Mark A. Behrens, Esq.
Shook, Hardy & Bacon, LLP

Thomas Hale Boggs, Jr., Esq.
Patton Boggs

Gary B. Born, Esq.
Wilmer, Cutler & Pickering
London, England

Michael K. Brown, Esq.
Reed Smith LLP
Los Angeles, California

George M. Burditt, Esq.
Bell, Boyd & Lloyd
Chicago, Illinois

The Hon. James H. Burnley, IV
Venable LLP

Henry N. Butler
Director, Judicial Education Project,
AEI-Brookings Joint Center for
Regulatory Studies

The Honorable Tom Campbell
Dean, Haas School of Business
University of California, Berkeley

Michael A. Carvin, Esq.
Jones Day

Charles Cooper, Esq.
Cooper & Kirk

Joseph E. diGenova, Esq.
diGenova & Toensing

Professor Viet D. Dinh
Georgetown University Law Center

The Honorable John Engler
President and CEO
National Association of Manufacturers

The Honorable Harold Furtchgott-Roth
Furtchgott-Roth Economic Enterprises

Kenneth S. Geller, Esq.
Mayer, Brown, Rowe & Maw LLP

Stuart M. Gerson, Esq.
Epstein Becker & Green, P.C.

Albert Gidari, Esq.
Partner

Perkins Coie LLP
Seattle, Washington

Benjamin L. Ginsberg, Esq.
Patton Boggs LLP

Steven B. Hantler
Assistant General Counsel
DaimlerChrysler Corporation

Professor William F. Harvey
Dean Emeritus & Carl M. Gray
Emeritus Professor of Law
Indiana University School of Law

Professor Maurice J. Holland
University of Oregon School of Law

The Honorable Troy King
Attorney General
State of Alabama

Clarence T. Kipps, Jr., Esq.
Miller & Chevalier

Philip A. Lacovara, Esq.
Mayer, Brown, Rowe & Maw LLP

Susan W. Liebeler, Esq.
Lexpert Research Services
Los Angeles, California

Roger J. Marzulla, Esq.
Marzulla & Marzulla

Arvin Maskin, Esq.
Weil, Gotshal & Manges
New York, New York

The Honorable Rob McKenna
Attorney General
State of Washington

John A. Merrigan, Esq.
DLA Piper

Professor John Norton Moore
University of Virginia
School of Law

Mark C. Morrill
Senior Vice President & Deputy
General Counsel
Viacom Inc

Glen D. Nager, Esq.
Jones Day

The Honorable Theodore B. Olson
Gibson, Dunn & Crutcher LLP

W. Hugh O'Riordan, Esq.
Givens, Pursley & Huntley
Boise, Idaho

Robert D. Paul, Esq.
White & Case

Professor Stephen B. Presser
Northwestern University
School of Law

Professor George L. Priest
John M. Olin Professor of Law
and Economics
Yale University

Charles F. (Rick) Rule, Esq.
Fried, Frank, Harris, Shriver
& Jacobson

The Honorable Mark Shurtleff
Attorney General
State of Utah

The Honorable Kenneth W. Starr
Dean, Pepperdine University
School of Law

The Honorable Don Stenberg
Former Attorney General
State of Nebraska

The Honorable Hal Stratton
Dykema Gossett PLLC

Ambassador Robert S. Strauss
Akin, Gump, Strauss, Hauer & Feld

The Honorable Eugene R. Sullivan
CEO, Gavel Consulting Group

George J. Terwilliger, Esq.
White & Case

Daniel E. Troy, Esq.
Sidley Austin Brown & Wood LLP

Steven J. Twist, Esq.
Vice President & General Counsel
Services Group of America

The Honorable William F. Weld
New York, New York

Joe D. Whitley, Esq.
Alston & Bird LLP

Wayne Withers
Senior Vice President
& General Counsel
Emerson Electric Co

Table of Contents

Introduction	2
Educational Program Speakers	7
Publications Directory	10
Alternative Dispute Resolution	10
Antitrust and Consumer Protection Regulation	10
Banking Law & Regulation	12
Biotechnology Regulation	12
Charitable Organizations	13
Civil Liberties of Business	13
Commercial Speech	15
Communications and Information Technology Law	18
Congress	19
Corporate Criminal Liability	19
Crime and Punishment	20
Discovery Process and Procedure	20
Election Law	20
Employment Law and Regulation	21
Endangered Species Regulation	21
Energy	22
Environmental Justice	22
Environmental Litigation	22
Environmental Regulation	23
False Claims Act	23
Federalism	24
Food, Drug, and Medical Device Regulation	25
Health Care	26
Immigration Law	28
Insurance Law	28
Intellectual Property	29
International Trade and Competitiveness	31
Judiciary & Courts	31
Lawyers	32
Litigation	32
National Security	34
Preemption	35
Procurement Law	36
Product Liability	36
Property Rights	36
Punitive Damages	37
Racketeer Influenced and Corrupt Organizations Act (RICO)	37
Scientific Evidence	38
Securities Regulation	38
Sentencing Guidelines	42
Special Interest Activism	42
State Law Development	42
Superfund	42
Tort Liability	43
Toxic Torts	45
Workplace Safety and Health Regulation	47
Archives	48
Index of Authors	73

Publishing

Since 1977, The Washington Legal Foundation (WLF) has been defending individual and economic freedom in America's federal and state courts. Established as a charitable nonprofit organization, WLF is a public interest law and policy center devoted to the defense and promotion of the American free enterprise system.

WLF understands that a thorough knowledge of complex policy and regulatory issues is the best defense against misguided government bureaucrats and activist lawyers who are eager to tread on even the most basic tenets of our economic rights. WLF disseminates astute perspectives through its Legal Studies Division — the preeminent publisher of persuasive, expertly researched, and highly respected legal papers. Since its establishment in 1986, WLF's Legal Studies Division has produced and distributed more than 1,800 publications.

WLF explores timely legal issues in seven published formats, each targeting specific policymaking audiences. These publications do more than inform the legal community and the public about issues vital to the fundamental rights of every American — they are the very substance that tips the scales in favor of those rights. The authors of WLF's publications are the nation's most versed legal professionals, including expert attorneys, business executives, judges, and senior government officials who contribute on a strictly *pro bono* basis. For the most recent list of publications, updated biweekly, visit our website at www.wlf.org.

Publication formats:

- **Counsel's Advisories** — announce urgent developments that impact free enterprise.
- **Legal Opinion Letters** — offer succinct legal analysis of recent court rulings and regulatory issues
- **Legal Backgrounders** — present concise discussions on selected law topics.
- **Working Papers** — provide in depth examination of critical legal issues.
- **Contemporary Legal Notes** — outline basic principles and issues in an area of law
- **Conversations With** — WLF's newest format provides a forum for leading legal experts to discuss current legal policy issues.
- **Monographs** — provide lengthy inquiries into significant legal issues.

Together, WLF and its supporters keep free enterprise free.

Bringing Issues to the Forefront



Contemporary Legal Notes

**DOING BUSINESS IN CHINA:
UNIQUE CORPORATION COMPLIANCE
CONCERNS AND STRATEGIES**

by
Jared A. Lee
James D. Sheer
Gibson, Dunn & Crutcher LLP

© 2007 Gibson, Dunn & Crutcher LLP
All rights reserved.



**NEW FALSE CLAIMS LAW
IN CENTIVES POSE RISKS FOR
CONTRACTORS AND STATES**

by
John T. Boese
Beth C. McCain
Fried, Frank, Harris, Sturner & Jacobson LLP

**WAIVER OF THE
ATTORNEY-CLIENT PRIVILEGE:
A BALANCED APPROACH**

by The Honorable Dick Thornburgh
Kirkpatrick & Lockhart, Nashleson, Graham LLP

Foreword by The Honorable John Engler
President and CEO, National Association of Manufacturers

Introduction by Laura Sieck
Senior Vice President - General Counsel
and Corporate Secretary
The Clorox Company

WASHINGTON LEGAL FOUNDATION
Washington, D.C.

Conversations With...

Summer 2015

Washington Legal Foundation
Advocate for Freedom and Justice™

The Honorable Dick Thornburgh Floyd Abrams Eric Sarnier

The latest Commercial Free Speech Foundation's CONVERSATIONS With examines the ability of business enterprises to communicate about their products and services - a highly contentious issue implicating one of our Constitution's most cherished rights. Former Attorney General of the United States Dick Thornburgh moderates an informative discussion with two leading First Amendment experts - Floyd Abrams of *CableTel's* & *Roads/LLP* and Eric Sarnier of *Skadden, Arps, Slater, Maguire & Flanigan LLP*. The participants examine the Supreme Court's past and current approach to advertising restrictions, recent government regulatory threats to commercial speech, and why

regulation to the purchase or sale of commercial goods. Such speech does not include speech about public policy issues related to commercial goods. I view such speech - and I believe the courts do as well - as more political or social in nature than commercial - and they think it's entitled to the full primacy of First Amendment rights afforded to the strictest form of any physical or verbal view. But speech that is simply related to the qualities of a product or its price would be considered commercial speech.

encourages and our country would benefit if courts conferred greater protection to such speech.

Question: "Then, what, Mr. Abrams, let's start out with a somewhat basic question: what is 'commercial speech'?"

Mr. Abrams: It's a surprisingly hard question since the definition of "commercial speech" has varied through the years. However, I think a pretty well established by now that commercial speech is speech which

relates to the purchase or sale of commercial goods. Such speech does not include speech about public policy issues related to commercial goods. I view such speech - and I believe the courts do as well - as more political or social in nature than commercial - and they think it's entitled to the full primacy of First Amendment rights afforded to the strictest form of any physical or verbal view. But speech that is simply related to the qualities of a product or its price would be considered commercial speech.



Dick Thornburgh
Attorney at Law
CableTel's & Roads/LLP



Eric Sarnier
Skadden, Arps, Slater,
Maguire & Flanigan LLP

WLF publications are available on Lexipol.com

www.wlf.org

Educational Program Speakers

An integral component of the Legal Studies Division's efforts has been the marketing of WLF's ideals through in-house programs and the efficient targeting of reporters, decision-makers, and others in its broad audience. The following distinguished experts have participated as speakers at WLF media briefings, web seminars, and other educational events.

The Hon. Spencer Abraham
Stanley Abramson
William Adkinson
Nicholas Allard
Harry Alford
Dr. Ken Alibek
Dr. Richard Anderson
Jan Amundson
Robert Anthony
Kevin Arquit
Michael Astrue
Donald Ayer
Mary Azcuenaga
George Baker
Jonathan Baker
Stewart Baker
James Scott Ballenger
David Balto
Jonathan Band
Christopher Batolomucci
Nathan Beaver
Mark Behrens
John Beisner
The Hon. Griffin Bell
Alan Bennett
Craig Berrington
The Hon. Ed Bethune
The Hon. Thomas Bliley
David Block
Timothy Bishop
Solange Bitol
Robert Bittman
John Bode
John Boese
Thomas Hale Boggs, Jr
The Hon. John Bolton
Gary Born
Theodore Boutros, Jr
Steven Bradbury
Richard Breeden
Daniel Brenner
Lanny Breuer
Beth Brinkman
Michael Bromwich
David Brown, Jr
Barbara Brown
Mark Brown
Edward Bruce
Daniel Bryant
Nancy Buc
Gregory Bruch
The Hon. Mary Beth Buchanan
James Burger
George Burditt
James Burnley IV
John Calfee
Mark Calloway
Jonathan Cannon
Paul Cappuccio
Dr. George Carlo
Barie Carmichael
Michael Carvin
Robert Charrow
Mary Cheh
Betty Jo Christian

The Hon. Benjamin Civiletti
Paul Clement
John Coale
Howard Cohen
Keith Cole
Gregory Conko
Daniel Connolly
Manus Cooney
Charles Cooper
Mark Cooper
Robert Corn-Revere
Alfred Cortese, Jr
Joseph Covington
Dr. Lester Crawford
L. Gordon Crovitz
Thomas Cullen
Lloyd Cutler
Arthur Culvahouse, Jr.
The Hon. Edward Damich
Alan Davidson
Walter Dellinger
Sandra Dennis
Rafael DeLeon
Walter Dellinger
V. Thomas DeVille
Joseph diGenova
Lee DeHihns, III
Viet Dinh
Carol Dinkins
Larsa Dobranski
Julie Domike
Robert Dormer
Richard Duesenberg
The Hon. Stuart Eizenstat
John Elwood
Bert Ely
Kenneth Elzinga
Roy Englert, Jr.
Miguel Estrada
Frank Fahrenkopf, Jr
Donald Falk
H. Barrow Farr, III
Jay Fastow
Timothy Flanigan
Albert Foer
Richard Frank
Jonathan Franklin
John Frantz
David Frederick
Andrew Frey
Bruce Merlin Fried
The Hon. Charles Fried
F. Edwin Froelich
The Hon. Harold Furchtgott-Roth
Pamela Furman
Gregory Garre
George Garvey
Andrew Gavil
The Hon. Stuart Gerson
Jeffrey Gibbs
Ronald Glancz
Robert Goldbergh, PhD
Thomas Goldstein
Linda Golodner
Patricia Good

Rob Gordon
Stanley Gorinson
The Hon. Neil Gorsuch
David Graham
Christine Grant
Mary Grealy
Gary Grundler
James Halpert
Patrick Hanlon
Steven Hantler
Bertrand Harding, Jr
David Hardy
Barry Hartman
Prof. John Harrison
Lonie Hassel
James Hawkins, III
The Hon. Jimmy Hayes
Warren Heck
Carmen Hernandez
Adonis Hoffman
Chris Hoofnagle
Alan Horowitz
Roscoe Howard, Jr
Larry Houck
Thomas Hungar
Michie Hunt, PhD
Steven Irzarry
David Irwin
David Israelite
J. Russell Jackson
Charles James
Professor Peter A. Jaszi
Barry Johnson
Sherman Joyce
Jonathan Kahan
John Kamp
Gregory Katsas
Christopher Kelly
Michael Kelly
Nandan Kenkeremath
Charles Kennedy
Ronald Klain
Ann Klee
Richard Klingler
Robert Knox
Douglas Koelemay
William Kolasky
Edward Korwek
Prof. Michael Krauss
Andrew Krulwich
Philp Lacovara
Laura Frick Laemmle
Jeffrey Lamken
Christopher Landau
Professor Robert Lande
Paul Larkan, Jr.
Eric Lasker
David Laing
Elizabeth Leff
David Leitch
Richard Levick
Arthur Levine
Mark Levy
Robert Levy
Lars Liebeler

Gene Livingston
Steve Lomax
Robert Long, Jr.
Deborah Lucas
Jane Luxton
William MacLeod
Steven Paul Mahinka
Maureen Mahoney
Mark Mansour
Daniel Marino
Colleen Martin
Roger Marzulla
William Mateja
William Mathias
Randolph May
Andrew McBride
Beth McClain
Robert McConnell
Catherine McCullough
Barbara McDowell
Mark McElreath
Thomas McGinnis, R.Ph
The Hon David McIntosh
Kenneth McLennan
A Douglas Melamed
James Miller, III
James Miller
Jessica Davidson Miller
Lawrence H. Mirel
Christian Mixer
Donald Moran
George Moscarino
Barry Nace
Glen Nager
John Nakahata
Irvin Nathan
Miriam Nemetz
Nancy Newkirk
David Nexon
The Hon. Gale Norton
Otto Obermaier
The Hon Theodore Olson
Michael O'Neill
Keith Onsdorff
Scott Oostdyk
Deborah Owen
Fredrick Palmer
Jeffrey Pariser
Prof. Jeffrey S. Parker
R. Hewitt Pate
Robert Paul
Jeffrey Peck
Robert Peck
Michael Penders
Ronald Peppe II
Ryan Petty
James Phelps
Carter Phillips
Mike Pickens
Larry Pilot
Andrew Pincus
Mark Plotkin
Travis Plunkett
Stephen Pociask
David Poe
Jonathan Potter
E Barrett Prettyman, Jr
George Priest
Stephen Quarles
The Hon. James Quello
W Scott Railton
Ira Raphaelson
Frank Rapoport
Alan Charles Raul
Thomas Redick
Bert Rein
Daniel Rezneck

Ira Rheingold
Prof. Larry Ribstein
Bradford Rich
Carlyle Ring
David Rvkin
Paul Craig Roberts
The Hon. John Roberts
Robert Roberts
Martha Rogers
Douglas Rosenthal
Marc Rotenberg
Charles Rothfeld
Ronald Rotunda
The Hon Warren Rudman
Rick Rule
Lawrence Salibra
The Hon Thomas Sansonetti
Richard Sauber
Nathan Schactman
Eric Schaeffer
Gene Schaerr
Joseph Schmitz
Victor Schwartz
James Seif
David Segal
Prof Charles Shafer
Eric Schaffer
Hal Shapiro
Benjamin Sharp
James Sivon
Michael Sklaire
Clifford Sloan
Alan Slobodin
Jayson S. Slotnik
Daniel Small
Julie Smith
Rick Smith
Stephen Smith
James Spears
Richard Spehr
Arthur Spitzer
The Hon. Stanley Sporkin
Judson Starr
The Hon Kenneth Starr
Traci Stegemann
Professor Rena Steinzor
Irwin Stelzer, Ph D.
Jay Stephens
David Stewart
The Hon Hal Stratton
Robert Sussman
Evan Tager
Richard Taranto
Bernard Taylor, Sr
John Taylor
Stuart Taylor
Daly Temchine
Sanford Teplitzky
George Terwilliger, III
The Hon. Larry Thompson
The Hon. Dick Thornburgh
John Thorne
D McCarty Thornton
James Thunder, Esq
Victoria Toensing
Willard Tom
E Neil Trautwein
Daniel Troy
Jonathan Turley
Alan Untereiner
The Hon Dennis Vacco
Donald Verrilli, Jr
John Walsh
Edward Warren
Seth Waxman
Prof Ruth Wedgewood
William Wehrum

Ronald Weich
Robert Weiner
David Weinberg
Barbara Wheeler
Frank White
Wayne White, CPA
Joe Whitley
Richard Wiley
Wesley Williams
Richard Willard
Steven Wolowitz
R. Ray Wood
The Hon Sue Ellen Wooldridge
James Wootton
James Wright
Michael Wroblewski
Gerald Yamada
Jonathan Yarowsky
The Hon Clayton Yeutter
David Young
Jeffrey Zuckerman

"I know of the work of the Washington Legal foundation and have great respect for it and its Board."

U.S. Supreme Court Justice Anthony M. Kennedy

Publications Directory

■ ALTERNATIVE DISPUTE RESOLUTION (ADR)

Federal Court Rejects Class Action Waivers In Arbitration Clauses

By Donald M. Falk and Archis A. Parasharami, a partner and an associate, respectively, at the firm Mayer Brown Rowe & Maw LLP
COUNSEL'S ADVISORY, October 6, 2006, 1 page

State High Court Condemns Arbitration Provisions That Don't Allow Class Actions

By Donald M. Falk, a partner in the Supreme Court and Appellate Practice Group of the law firm Mayer Brown Rowe & Maw LLP, resident in the Palo Alto office, and Archis A. Parasharami, an associate in the firm's Washington, D.C. office
LEGAL BACKGROUND, March 24, 2006, 4 pages

U.S. Supreme Court Gives Employers A Chance To Avoid Costly Litigation

By Michael J. Connolly, a member of the Detroit office of Raley Roumell & Connolly, P.C., and Clifford J. Scharman, a member of the firm's Washington, D.C. office
LEGAL BACKGROUNDER, June 29, 2001, 4 pages

California High Court Lays Out Mandatory Arbitration Guidelines

By William J. Emanuel, a partner, and Harry I. Johnson, III, an associate, in the Los Angeles office of the law firm Jones Day
LEGAL BACKGROUNDER, November 17, 2000, 4 pages

■ ANTITRUST & CONSUMER PROTECTION REGULATION

English Court Permits "Forum Shopping" In Private Antitrust Suits

By David Marks, a partner at the law firm CMS Cameron McKenna LLP
COUNSEL'S ADVISORY, July 21, 2006, 1 page

Supreme Court Should Rule Pleading Standards For Antitrust Mega-Litigation

By Roy T. Englert Jr., a founding partner of Robbins, Russell, Englert, Orseck & Untereiner LLP in Washington, D.C.
LEGAL OPINION LETTER, May 19, 2006, 2 pages

High Court Hears Key Case On Antitrust And Joint Ventures

By William Kolasky, a partner, and Steven Lehotsky, an associate at Wilmer Cutler Pickering Hale and Dorr LLP, in the firm's Washington and Boston offices, respectively. Mr. Kolasky was previously Deputy Assistant Attorney General for International Enforcement in the Antitrust Division of the U.S. Department of Justice
LEGAL BACKGROUNDER, January 6, 2006, 4 pages

Closer Judicial Scrutiny Will Alter Antitrust Review Of Mergers In Europe

By Denise L. Díaz, a former trial attorney of the Antitrust Division of the U.S. Department of Justice who practices in California, specializing in antitrust law
LEGAL BACKGROUNDER, July 1, 2005, 4 pages

Court Finds Patent Creates Presumption Of Market Power In Antitrust Tying Actions

By Connie Robinson and Peter Boyle, partners, and Saadeh Al-Jurf, an associate, of the Washington, D.C. office of the law firm Kilpatrick Stockton LLP
LEGAL OPINION LETTER, March 11, 2005, 2 pages

The European Commission's Decision In The Microsoft Case: An Economic Perspective

By Peter Passell, a senior fellow at The Milken Institute
WORKING PAPER, August 2004, 38 pages

An Expanded European Union New Competition Rules And Challenges For U.S. Companies

By Donald Falk, Hans-Georg Kamann and Peter Scher, partners with the law firm Mayer, Brown, Rowe & Maw
LEGAL BACKGROUNDER, July 23, 2004, 4 pages

Europe Should Learn From Recent U.S. Court Ruling In Microsoft

By Robert A. McTamaney, a partner in the New York City law firm Carter, Ledyard, & Milburn where he is Co-Chair of the Corporate Department
COUNSEL'S ADVISORY, July 9, 2004, 2 pages

Innovation At A Crossroads: Microsoft, Mario Monti & Media Players

By Robert A. McTamaney, a partner in the New York City Law Firm of Carter, Ledyard & Milburn where he is Co-Chairman of the Corporate Department.
LEGAL BACKGROUNDER, April 2, 2004, 4 pages

Rulings Invite Antitrust Suits In U.S. Based On Overseas Conduct

By Marinn Carlson, a partner in the Washington, D.C. office of Sidley Austin Brown & Wood LLP, and Larry Fullerton, also a partner with the firm
LEGAL OPINION LETTER, July 18, 2003, 2 pages

State Competition Law Imposes Tax On Businesses And Consumers

By William L. Stern, a partner with the San Francisco law firm Morrison & Foerster, LLP
LEGAL OPINION LETTER, February 14, 2003, 2 pages

The Proposed Microsoft Decree And Past Antitrust Remedies: A Systematic Comparison

By Robert W. Crandall, a senior fellow at the Brookings Institution in Washington, D.C.
WORKING PAPER, November 2002, 56 pages

FTC Administrative Judge Rejects Commission's View Of Drug Patent Settlements

By Geraldine M. Alexis and Zorah Brathwaite, a partner and an associate, respectively, with the law firm Bingham McCutchen LLP in its San Francisco office
LEGAL BACKGROUNDER, October 4, 2002, 4 pages

U.S. And European Merger Policies Move Towards Convergence

By the late Stanley M. Gorinson, a partner in the Washington, D.C. office of the law firm Kilpatrick Stockton LLP, where he chaired the firm's antitrust practice, and Robert Pambianco, formerly an associate with the firm
LEGAL BACKGROUNDER, August 9, 2002, 4 pages

State "Indirect Purchaser" Suits Benefit Lawyers, Not Consumers
By Robert A. McTamane, a partner in the New York City law firm Carter, Ledyard & Milburn LLP, where he chairs the Corporate Department

LEGAL BACKGROUNDER, July 12, 2002, 4 pages

Recent Patent Ruling Intrudes On Key Antitrust Immunity Doctrine

By Christopher Sipes and James R. Atwood, partners in the Washington, D.C. office of the law firm Covington & Burling
LEGAL BACKGROUNDER, April 26, 2002, 4 pages

"Mission Creep" At FTC? Use Of Disgorgement Remedy Signals Desire To Prosecute

By Pamela J. Auerbach and Alex Dimitrieff, partners in the Washington, D.C. and Chicago offices, respectively, of the law firm Kirkland & Ellis LLP

LEGAL BACKGROUNDER, April 5, 2002, 4 pages

Microsoft Underscores State Interference In Federal Antitrust
By Leonard Orland, a Professor of Law at the University of Connecticut

LEGAL OPINION LETTER, March 8, 2002, 2 pages

U.S. v. Microsoft: A Legal And Economic Analysis Of The Settlement

By George L. Priest, the John M. Olin Professor of Law and Economics at Yale Law School

CONTEMPORARY LEGAL NOTE, March 2002, 39 pages

Appraising DOJ's New Initiative For Pre-Merger Review

By Joe Sims, a partner in the Washington, D.C. office of the law firm Jones Day

LEGAL BACKGROUNDER, February 8, 2002, 4 pages

FTC Improperly Injects Itself Into Drug Patent Settlements

By Geraldine M. Alexis and Zorah Braithwaite, a partner and an associate, respectively, with the law firm Bingham McCutchen in its San Francisco office

LEGAL BACKGROUNDER, November 2, 2001, 4 pages

In U.S. v. Microsoft: The Government's Claims And The Courts' Rulings

By Dr. David S. Evans, a senior vice president of National Economic Research Associates

CONTEMPORARY LEGAL NOTE, September 2001, 25 pages

FTC Should Protect Consumers From Contingency Fee Abuses

By Victor E. Schwartz, a partner in the Washington, D.C. office of the law firm Shook, Hardy & Bacon and Chairman of the firm's Public Policy Group, Mark A. Behrens, a partner with the firm, and Rochelle M. Tedesco, formerly an associate with the firm
COUNSEL'S ADVISORY, September 7, 2001, 1 page

Innovation And Integration: The Microsoft Case And Windows XP

By Robert A. McTamane, a partner in the New York City law firm Carter, Ledyard & Milburn LLP, where he chairs the Corporate Department

LEGAL BACKGROUNDER, September 7, 2001, 4 pages

Drug Patent Settlements Should Be Handled On A Case-By-Case Basis

By Jeffrey I. Weinberger, a partner in the Los Angeles office of Munger, Tolles & Olson LLP, specializing in antitrust and trade regulation matters

LEGAL BACKGROUNDER, July 13, 2001, 4 pages

AOL/Time Warner Case Signals Need To Update Merger Guidelines

By Joseph Kattan, a partner in the Washington office of the law firm Gibson, Dunn & Crutcher LLP

LEGAL BACKGROUNDER, June 1, 2001, 4 pages

DOT Should Reconsider Air Cargo License Decision

By Congressman John J. Duncan, who has served the Second District of Tennessee since 1988, is a member of the House Transportation and Infrastructure Committee

LEGAL OPINION LETTER, April 20, 2001, 2 pages

Microsoft On Appeal: "Monopolies" In A Complex Society

By Robert A. McTamane, a partner in the New York City law firm Carter, Ledyard & Milburn LLP, where he chairs the Corporate Department

WORKING PAPER, February 2001, 23 pages

Courts Correctly Repel Class Action Assault On Microsoft

By Mary L. Azcuenaga, a shareholder in the Washington, D.C. office of the law firm Heller Ehrman White & McAuliffe and a former Federal Trade Commission commissioner

COUNSEL'S ADVISORY, August 25, 2000, 1 page

Online "Business-to-Business" Enterprises Raise Antitrust Issues

By Richard E. Donovan, a partner and chair of the Antitrust & Trade Regulation Practice Group with the law firm Kelley Drye & Warren in New York City

LEGAL OPINION LETTER, August 11, 2000, 2 pages

Assessing Antitrust Guidelines For Competitor Collaborations

By Peter C. Ward, a Shareholder specializing in antitrust and trade regulation matters in the Nashville office of the law firm Baker, Donelson, Bearman & Caldwell

LEGAL BACKGROUNDER, March 17, 2000, 4 pages

High-tech Economy And Consumers Lose If DOJ Wins Microsoft Case

By Daniel J. Popeo, Chairman and General Counsel of the Washington Legal Foundation

LEGAL BACKGROUNDER, February 18, 2000, 4 pages

U.S. v. Microsoft: DOJ's "New" Antitrust Paradigm Resurrects Outdated Economics

By Antonio F. Perez, a professor at The Catholic University of America, Columbus School of Law

LEGAL BACKGROUNDER, February 4, 2000, 4 pages

Ruling Offers Hope To Targets Of California's "Little FTC Act"

By Timothy P. Crudo, a partner in the litigation department of Latham & Watkins' San Francisco office

LEGAL OPINION LETTER, January 7, 2000, 2 pages

■ BANKING LAW & REGULATION

Sovereign Debt Default Cry For The United States, Not Argentina

By Professor Hal S. Scott, Nomura Professor of Law at Harvard Law School and Director of its Program on International Financial Systems
WORKING PAPER, September 2006, 47 pages

Balance Sorely Lacking In Bank Secrecy Act Enforcement

By James M. Rockett, a partner in the law firm of Bingham McCutchen LLP in San Francisco, where he co-heads the Financial Institution, Corporate and Regulatory practice
LEGAL BACKGROUNDER, January 14, 2005, 4 pages

The Community Reinvestment Act Will Current Debate Determine Its Future?

By Bruce O. Jolly and John B. Beaty, partners in the Washington, D.C. office of the law firm Venable LLP, where they practice in the Banking and Financial Services area
LEGAL BACKGROUNDER, November 12, 2004, 4 pages

State Suit On Federal Banking Rules Imperils Consumers' Access To Loans

By James M. Rockett, a partner in the law firm of Bingham McCutchen LLP where he co-heads the Financial, Corporate and Regulatory practice
LEGAL OPINION LETTER, April 2, 2004, 2 pages

Proposal On "Predatory" Lending: One Step Forward, One Step Back?

By James M. Rockett, a partner and co-head of the Financial Institutions Corporate and Regulatory practice of Bingham McCutchen LLP, San Francisco
LEGAL OPINION LETTER, September 19, 2003, 2 pages

Regulation And Self-Policing Will Influence Consumers Access To Payday Loans

By Charles M. Horn, a partner in the Washington, D.C. office of the law firm of Mayer, Brown, Rowe & Maw LLP
LEGAL BACKGROUNDER, November 14, 2003, 4 pages

Defiant Freddie And Fannie. Sketchy Financial Disclosure Harms Investors And Taxpayers

By Bert Ely, a financial institutions and monetary policy consultant and the principal in Ely & Company, Inc., Alexandria, Virginia
LEGAL OPINION LETTER, October 4, 2002, 2 pages

In Defense Of Moderation. Avoiding Overregulation Of "Special Purpose Entities"

By Charles M. Horn, a partner in the Washington, D.C. office of the law firm Mayer, Brown, Rowe & Maw LLP
LEGAL BACKGROUNDER, September 20, 2002, 4 pages

Federal Court Holds Bank Regulators Accountable For Breaching Contracts

By the late Warren L. Dennis, a senior litigation partner in the Washington, D.C. office of Proskauer Rose LLP, and Amybeth Garcia-Bokor of the Division of Enforcement in the Securities and Exchange Commission
LEGAL BACKGROUNDER, July 13, 2001, 4 pages

Arbitration Clauses Can Safeguard Lenders From Class Actions

By Richard Eckman, Stephen Harvey, and Jeffrey Techentun, members of the Consumer Financial Services Practice Group of the Philadelphia law firm Pepper Hamilton LLP
LEGAL OPINION LETTER, December 15, 2000, 2 pages

Fed Proposal To Identify Loan Applicants' Race Misguided

By James M. Rockett, a partner in the law firm of Bingham McCutchen LLP in San Francisco, where he co-heads the Financial Institution, Corporate and Regulatory practice
LEGAL OPINION LETTER, March 31, 2000, 2 pages

Comments Due On Proposals Regarding Financial Data Privacy

By Robert H. Ledig, a partner with the Washington, D.C. law firm Fried, Frank, Harris, Shriver & Jacobson and a member of the firm's Financial Institutions Group
COUNSEL'S ADVISORY, March 17, 2000, 1 page

■ BIOTECHNOLOGY REGULATION

Federal Preemption And State Anti-"GM" Food Laws

By Eric Lasker, a partner in the Washington, D.C. law firm Spriggs & Hollingsworth
LEGAL BACKGROUNDER, December 2, 2005, 4 pages

Debate Over "Generic Biologics" Poses Unique Challenges For Policy Makers

By Alvin J. Lorman, a partner in the Washington, D.C. office of the global law firm of Mayer, Brown, Rowe & Maw LLP
LEGAL BACKGROUNDER, May 14, 2004, 4 pages

New EU Rules On "GMO" Food And Feed Details And Analysis

By Mark Mansour, a partner with the law firm Foley & Lardner LLP and Sara Key, an associate with the firm
CONTEMPORARY LEGAL NOTE, April 2004, 22 pages

Engineering Legal Risk Management Into Agricultural Biotechnology

By Thomas P. Redick, a member of the law firm Gallop, Johnson & Neuman, L.C. in St. Louis
LEGAL BACKGROUNDER, January 16, 2004, 4 pages

Drug Importation A Prescription To Put Biotech On Life Support

By The Honorable David M. McIntosh, a former Congressman from Indiana, and currently a partner in the Washington office of the Washington law firm Mayer, Brown, Rowe & Maw LLP
LEGAL BACKGROUNDER, JUNE 11, 2004, 4 pages

On The Agenda? Food Safety And The World Trade Organization

By Stuart E. Eizenstat, a partner in the Washington, D.C. law firm Covington & Burling, and former U.S. Ambassador to the European Union and U.S. Under Secretary of State in the Clinton Administration
WORKING PAPER, November 2001, 18 pages

Excessive "Precaution" Threatens Food Consumers And Foreign Trade

By Mark Mansour, a partner in the Washington D.C. office of the law firm Foley & Lardner LLP
LEGAL BACKGROUNDER, October 19, 2001, 4 pages

Genetic Enhancements Can Reduce Food Company Legal Risks
By **Drew L. Kershen**, the Earl Sneed Centennial Professor of Law at the University of Oklahoma College of Law
LEGAL BACKGROUNDER, September 7, 2001, 4 pages

Genetically Enhanced Seed Suits Not Rooted In Law Or Logic
By **Rachel G. Lattimore**, a partner, and **Raquel Whiting**, an associate with the Washington, D C law firm Arent Fox Kintner Plotkin & Kahn, PLLC
LEGAL BACKGROUNDER, July 27, 2001, 4 pages

Agriculture Biotechnology. Will Regulatory "Precaution" Expand Liability Risks?
By **Thomas P. Redick**, an attorney with the St. Louis law firm Gallop, Johnson & Neuman, L C., specializing in product liability prevention for technology clients. Foreword by Representative **Nick Smith**, Chairman of the U.S. House of Representatives Subcommittee on Basic Research
MONOGRAPH, January 2001, 50 pages

Why Safe And Effective Food Biotechnology Is In The Public Interest
By **Dr. Martina McGloughlin**, Director of the Biotechnology Program at UC Davis and Director of the UC Systemwide Life Sciences Informatics Program
WORKING PAPER, December 2000, 27 pages

Federal Court Rejects Novel Legal Attack On Biotech Seeds
By **Scott S. Partridge**, the managing partner, and **Kerry J. Miller**, a member, of the New Orleans-based law firm Frlot, Partridge, Kohnke & Clements, L C.
LEGAL BACKGROUNDER, July 28, 2000, 4 pages

Regulation Of Biotech Foods: Obstacles And Opportunities
By **Mark Mansour**, a partner in the Washington D C office of the law firm **Foley & Lardner LLP**, and **Jennifer B. Bennett**, who is an associate, in the Washington D C law firm **Keller and Heckman LLP**
LEGAL BACKGROUNDER, July 14, 2000, 4 pages

"Precautionary Principle" Stalls Advances In Food Technology
By **Henry I. Miller, M.D.**, a Senior Research Fellow at Stanford University's Hoover Institution, and **Gregory Conko**, Director of Food Safety Policy at the Competitive Enterprise Institute
LEGAL BACKGROUNDER, May 26, 2000, 4 pages

Science And Reason Must Guide Decisions On Biotech Food
By **U.S. Senator Kit Bond**, who has served the state of Missouri in the United States Senate since 1987
LEGAL BACKGROUNDER, May 26, 2000, 4 pages

Mandated Biotech Food Labeling Ineffective And Legally Suspect
By **John W. Bode**, a principal in the Washington, D C law firm **Olsson, Frank & Weeda**, which specializes in food and drug law
LEGAL OPINION LETTER, March 3, 2000, 2 pages

Informed Debate Can Break Down Barriers To Biotechnology
By **Daniel L. Spiegel**, a senior partner in the Washington D C office of **Akin Gump Strauss Hauer & Feld, LLP**, and **Laura M. Reifschneider**, counsel in the firm's Brussels office
LEGAL BACKGROUNDER, January 7, 2000, 4 pages

■ CHARITABLE ORGANIZATIONS

Donor Intent: Preserving The Mission Of Charitable Foundations
By **Lloyd H. Mayer**, a member in the Washington, D C law firm **Caplin & Drysdale, Chartered**
CONTEMPORARY LEGAL NOTES, January 2003, 43 pages

■ CIVIL LIBERTIES OF BUSINESS

Waiver Of The Attorney-Client Privilege: A Balanced Approach
By **The Honorable Dick Thornburgh**, Of Counsel to the law firm **Kirkpatrick & Lockhart Nicholson Graham LLP**. Foreword by **The Honorable John Engler**, President and CEO of the National Association of Manufacturers. Introduction by **Laura Stein**, Senior Vice President - General Counsel and Secretary, The **Clorox Company**
MONOGRAPH, July 2006, 90 pages

Risks And Rewards of Waiving The Attorney-Client Privilege
By **Joel B. Harris**, a partner, and **Andrew I. Stemmer**, a former associate, in the Litigation and Dispute Resolution Department of the law firm **Thacher Proffitt & Wood LLP**
LEGAL BACKGROUNDER, July 7, 2006, 4 pages

Organizing A Successful Corporate Internal Investigation
By **The Honorable Dick Thornburgh**, Of Counsel to the law firm **Kirkpatrick & Lockhart Nicholson Graham LLP**
LEGAL BACKGROUNDER, April 21, 2006, 4 pages

Attorney-Client Privilege & Employee Interviews In Internal Investigations
By **Paul B. Murphy**, a partner with **King & Spalding LLP's** Special Matters and Government Investigations Group who previously served as the United States Attorney for the Southern District of Georgia, and **Lucian E. Dervan**, an associate with **King & Spalding's** Special Matters and Government Investigations Group
CONTEMPORARY LEGAL NOTE, March 2006, 16 pages

Federal Privilege Waiver Demands Impact Corporate Compliance
By **Richard Ben-Veniste**, a senior partner in the Washington, D C office of the law firm **Mayer, Brown, Rowe & Maw LLP**, specializing in white collar defense and civil litigation and **Raj De**, an associate with the firm
LEGAL BACKGROUNDER, February 24, 2006, 4 pages

Court Protects Defendant's Due Process Rights In Criminal Antitrust Case
By **Steven M. Kowal**, a partner in the Chicago office of **Bell, Boyd & Lloyd LLC** where he heads the firm's White Collar Criminal Defense Group and is a member of the Antitrust Department
COUNSEL'S ADVISORY, April 8, 2005, 1 page

The Attorney-Client Privilege: A Casualty Of Post-Enron Enforcement
By **John M. Callagy**, a partner with, and Chairman of, the New York law firm **Kelley Drye & Warren LLP**
LEGAL BACKGROUNDER, October 29, 2004, 4 pages

WLF Launches Investigation Of Agency Enforcement Abuse
By **Paul D. Kamenar**, Senior Executive Counsel to **Washington Legal Foundation**
COUNSEL'S ADVISORY, November 14, 2003, 1 page

Expanded Legal Privilege Needed For Litigation Public Relations
By Clark S. Judge, the Managing Director of White House Writers Group

LEGAL OPINION LETTER, October 3, 2003, 2 pages

Raids By European Antitrust Cops Held To Violate Human Rights
By the late Stanley M. Gorinson, a partner in the Washington, D.C. office of the law firm Kilpatrick Stockton LLP, where he chaired the firm's antitrust practice, and Robert V. Pambianco, formerly an associate with the firm

COUNSEL'S ADVISORY, June 21, 2002, 1 page

Comments Due On Flawed Federal Rules And "Guidances"

By Richard G. Stoll, who practices environmental and administrative law with the Washington, D.C. office of Foley & Lardner
COUNSEL'S ADVISORY, May 10, 2002, 1 page

Participate In OMB's Regulatory Reform Efforts

By Jim J. Tozzi, a member of the Board of Advisors of the Center for Regulatory Effectiveness and a senior career official at the inception of OMB's Office of Information and Regulatory Affairs
COUNSEL'S ADVISORY, May 10, 2002, 1 page

Federal Agency Policies Imperil Privacy Of Business Information
By Gerald H. Yamada, a partner with the law firm O'Connor & Hannan in Washington, D.C.

LEGAL OPINION LETTER, April 5, 2002, 2 pages

President Expands Oversight Of Federal Agency Rulemaking

By the late Ernest Gellhorn, a Professor of Law at George Mason University, Wendy L. Gramm, Director of the Regulatory Studies Program, Mercatus Center, at George Mason University, and Susan E. Dudley, a Senior Research Fellow with the Mercatus Center

LEGAL BACKGROUND, November 16, 2001, 4 pages

EPA Should Adopt WLF Proposal To Protect Inspection Targets' Rights

By Carol E. Dinkins, a partner in the Houston office of Vinson & Elkins, where she is co-chair of the law firm's administrative and environmental law practice

COUNSEL'S ADVISORY, July 27, 2001, 1 page

Supreme Court Curtails Judicial Deference To Federal Agencies

By Arthur G. Sapper, a partner in the Washington, D.C. office of the law firm McDermott, Will & Emery LLP

LEGAL OPINION LETTER, July 13, 2001, 2 pages

Legal Policy Priorities For The New Justice Department

By Stuart M. Gerson, a partner in the law firm Epstein Becker & Green, P.C., was Assistant Attorney General for the Civil Division during the presidency of George H.W. Bush and then acting Attorney General

LEGAL BACKGROUND, February 23, 2001, 4 pages

Businesses' Privacy And Property Rights Threatened In California
By Michael K. Brown and Lisa M. Baird, partners with the Los Angeles office of the law firm Reed Smith LLP

LEGAL BACKGROUND, February 23, 2001, 4 pages

Government Abuse Of RICO Law Threatens Business Civil Liberties

By Barry B. Drenfeld, head of the Government Affairs practice group in the Washington, D.C. office of the law firm Swidler Berlin Shereff Friedman, LLP, and Melanie Carr, an associate with the firm

LEGAL BACKGROUND, February 9, 2001, 4 pages

Rulings Offer Guidance On Maintaining Protective Orders

By Anita Hotchkiss, a principal at Porzio, Bromberg and Newman of Morristown, New Jersey and New York City

LEGAL BACKGROUND, January 12, 2001, 4 pages

New Judicial Role On Sealing Of Records Takes Effect In California

By Jill Cooper Teroaka and Abigail Page, attorneys with Bingham McCutchen in Los Angeles

COUNSEL'S ADVISORY, January 12, 2001, 1 page

Science And Reason Must Guide Rulemaking In New Administration

By Alan Charles Raul, a partner in the Washington, D.C. office of the law firm Sidley Austin Brown & Wood who served as General Counsel of the Office of Management and Budget and the U.S. Department of Agriculture, as well as Associate White House Counsel in the first Bush Administration and the Reagan Administration

LEGAL OPINION LETTER, January 12, 2001, 2 pages

DOJ Prosecution Guidance Threatens Privileged Communications

By Robert V. Pambianco, a Washington, D.C. attorney

COUNSEL'S ADVISORY, October 6, 2000, 1 page

Court Forces EPA To Comply With Due Process Standards

By Richard G. Stoll, a partner in the Washington, D.C. office of the law firm Foley & Lardner

LEGAL BACKGROUND, September 8, 2000, 4 pages

Risks & Rewards Of Voluntary Disclosure Under EPA's Audit Policy

By Thomas J. Kelly, Jr., a partner in the Washington, D.C. office of the law firm Venable LLP, and Gregory S. Braker, a senior associate with the firm

CONTEMPORARY LEGAL NOTE, August 2001, 19 pages

High Court Ruling Sends Message To Ambitious Federal Regulators

By Andrew S. Gold, an associate in the Government Division at the Washington, D.C. office of Venable LLP

LEGAL OPINION LETTER, July 14, 2000, 2 pages

Courts Should Not Defer to Agencies' Interpretation Of Their Own Rules

By James N. Christman, David S. Harlow, and Craig S. Harrison, attorneys in the Washington, D.C. and Richmond offices of the law firm Hunton & Williams

LEGAL BACKGROUND, May 12, 2000, 4 pages

Justice Department Suit Attacks Corporate Speech Rights
By Jan Amundson, Vice President and General Counsel of the National Association of Manufacturers
LEGAL BACKGROUNDER, January 26, 2000, 4 pages

Attorney-Client Privilege Under Attack In Health Care Fraud Cases
By Jody Manier Kris, a partner with the Washington, D C law firm Wilmer Hale, LLP
LEGAL BACKGROUNDER, January 7, 2000, 4 pages

■ COMMERCIAL SPEECH

Fresh Bagels And A Schmeer: A Sign Of The Times Ruling On Commercial Free Speech
By Arnold I. Friede, Senior Corporate Counsel with Pfizer, Inc
COUNSEL'S ADVISORY, October 6, 2006, 1 page

Alcohol Advertising Federal And State Regulators Should Tread Lightly
By David Versfelt, a partner with the law firm Kirkpatrick & Lockhart Nicholson Graham LLP and Adonis Hoffman, Senior Vice President and Counsel with the American Association of Advertising Agencies
LEGAL BACKGROUNDER, October 6, 2006, 4 pages

Ideology Masked As Scientific Truth: The Debate About Children And Advertising
By Dr. John C. Luik, a public and science policy researcher who is a Senior Fellow with the Democracy Institute Foreword by Professor Todd J. Zywicki of the George Mason University School of Law
MONOGRAPH, August 2006, 101 pages

CMS Information Policy Under Medicare "Part D" Creates 1st Amendment Problems
By Ronald D. Rotunda, a professor of law at the George Mason University School of Law
LEGAL BACKGROUNDER, July 7, 2006, 4 pages

Judicial Chorus Against "Attractive Advertising" Suits Grows Louder With Ruling
By J. Russell Jackson, a partner at Skadden, Arps, Slate, Meagher, & Flom LLP and an adjunct professor of law at Brooklyn Law School
LEGAL OPINION LETTER, June 16, 2006, 2 pages

D.C. Court Dismisses "Attractive Advertising" Class Action Lawsuit
By J. Russell Jackson, a partner in the Complex Mass Torts Group of New York's Skadden, Arps, Slate, Meagher & Flom LLP and an adjunct professor of law at Brooklyn Law School
COUNSEL'S ADVISORY, May 5, 2006, 1 page

Health And Speech Rights At Risk from Attacks On Medical Education
By Jeffrey N. Gibbs, a principal with the law firm Hyman, Phelps & McNamara, PC in its Washington, D C office
LEGAL BACKGROUNDER, April 7, 2006, 4 pages

Advertising And Preemption Under FDA's New Drug Labeling Rule
By Tish E. Pahl, a principal with Olsson, Frank and Weeda, PC
LEGAL OPINION LETTER, March 24, 2006, 2 pages

Federal And State Courts Reject "Attractive Advertising" Claims
By J. Russell Jackson, a partner in the Complex Mass Torts Group of New York's Skadden, Arps, Slate, Meagher & Flom LLP and an adjunct professor of law at Brooklyn Law School
LEGAL BACKGROUNDER, March 10, 2006, 4 pages

Court Properly Dismisses Anti-Alcohol Class Action Suit
By Carl K. Dawson, a partner, and Tiffany L. Powers, an associate, with the law firm of Alston & Bird LLP
COUNSEL'S ADVISORY, December 16, 2005, 1 page

"Off-Label" Speech. Uncertainty Reigns For Device & Drug Makers
By Ralph F. Hall, Visiting Associate Professor of Law at the University of Minnesota Law School and Counsel to the law firm Baker & Daniels, Indianapolis, Indiana, and Washington D C
LEGAL BACKGROUNDER, December 2, 2005, 4 pages

Beware Warning Labels On Soft Drinks
By Michael J. O'Flaherty, a principal at the law firm Olsson, Frank and Weeda, PC, who concentrates his practice in food and dietary supplement regulatory matters
LEGAL BACKGROUNDER, November 4, 2005, 4 pages

Conversations With Commercial Free Speech
Features The Honorable Dick Thornburgh, Counsel to the law firm Kirkpatrick & Lockhart Nicholson Graham LLP moderating a discussion with leading First Amendment experts Floyd Abrams of the New York City law firm Cahill Gordon & Reindel LLP, and Eric S. Sarnier, Senior Assistant General Counsel of Praxair Inc, and a former counsel with the law firm Skadden, Arps, Slate, Meagher & Flom LLP in its New York City office
CONVERSATIONS WITH, Summer 2005, 8 pages

Proposal Limiting Distribution Of Health Care Information Infringes Free Speech Rights
By Glenn G. Lammi, Chief Counsel to Washington Legal Foundation's Legal Studies Division
LEGAL OPINION LETTER, June 17, 2005, 2 pages

State Attorney General Issues Opinion On Commercial Speech Rights
By Glenn G. Lammi, Chief Counsel to Washington Legal Foundation's Legal Studies Division
COUNSEL'S ADVISORY, May 3, 2005, 1 page

State Drug Ad "Rebate" Proposal Treads On Commercial Speech Rights
By Rosemary C. Harold, formerly a partner with the Washington, D C law firm Wiley Rein & Fielding LLP and currently Deputy Director of the Mass Media Bureau at the Federal Communications Commission, and Mark A. McAndrew, an associate in the Washington, D C law firm Wiley, Rein & Fielding LLP
LEGAL OPINION LETTER, March 25, 2005, 2 pages

Commercial Speech: Essential For Health Of Consumers And Free Enterprise

By Timothy J. Muris, Of Counsel to O'Melveny & Myers LLP, where he co-chairs the firm's antitrust and competition practice. Mr. Muris is also a George Mason University Foundation Professor of Law, and from 2001-04 he was Chairman of the Federal Trade Commission.

LEGAL BACKGROUNDER, March 25, 2005, 4 pages

FTC Ruling On Product Placement Calls For Caution On Product Claims

By David Price, former Senior Vice President for Legal Affairs of the Washington Legal Foundation.

COUNSEL'S ADVISORY, February 25, 2005, 1 page

Recent Court Rulings Undermine Suits Against Alcohol Advertising

By Lisa Jose Fales, a partner at Venable LLP in Washington, D.C., specializing in consumer protection and antitrust law, and Ronald M. Jacobs, an associate at Venable LLP in Washington, D.C., also specializing in consumer protection and antitrust law.

LEGAL BACKGROUNDER, February 11, 2005, 4 pages

Lawsuits Targeting Alcohol Ads Tread On Free Speech Rights

By John J. Walsh, Senior Counsel to the New York City law firm Carter Ledyard & Milburn LLP.

LEGAL BACKGROUNDER, October 15, 2004, 4 pages

Federal Appeals Court Rules Alcohol Ad Ban Unconstitutional

By Eric S. Sarner, Senior Assistant General Counsel to Praxair, Inc., and former Counsel in the New York office of Skadden, Arps, Slate, Meagher & Flom LLP.

LEGAL OPINION LETTER, October 1, 2004, 2 pages

State Fraud Suits Over Drug Clinical Trial Results Tread On Free Speech Rights

By Mark E. Nagle, a partner in the Washington, D.C. office of the law firm Troutman Sanders LLP, who recently served as Chief of the Civil Division in the United States Attorney's office for the District of Columbia.

LEGAL BACKGROUNDER, September 17, 2004, 4 pages

Senate Proposal On Drug Importation Treads On Constitutional Rights

By Burt Neuborne, John Norton Pomeroy Professor of Law at New York University Law School, where he has taught Constitutional Law, Federal Courts, Civil Procedure and Evidence for more than thirty years, and former National Legal Director of the ACLU.

LEGAL BACKGROUNDER, July 9, 2004, 4 pages

Activists' Product Placement Proposal Threatens Commercial Free Speech

By Douglas J. Wood, a partner at Reed Smith, LLP, a top 25 international law firm, and head of Reed Smith Hall Dickler, the firm's advertising and marketing practice.

LEGAL BACKGROUNDER, June 11, 2004, 4 pages

Unique California Laws Imperil Speech On "Off-Label" Use Of Drugs

By Lisa M. Baird and Michael K. Brown, partners in the international law firm of Reed Smith LLP who specialize in litigation involving the pharmaceutical and medical device industries.

LEGAL BACKGROUNDER, May 14, 2004, 4 pages

Investigations Of Drug Promotion Threaten First Amendment Rights

By Richard A. Samp, Chief Counsel to the Washington Legal Foundation.

COUNSEL'S ADVISORY, April 16, 2004, 1 page

FDA Guidance for "DTC" Ads Strives To Advance Consumer Understanding

By Rosemary C. Harold, formerly a partner with the Washington, D.C. law firm Wiley Rein & Fielding LLP and currently Deputy Director of the Mass Media Bureau at the Federal Communications Commission, and John F. Kamp, of counsel to Wiley, Rein & Fielding LLP.

LEGAL OPINION LETTER, February 20, 2004, 2 pages

Dispelling The Myth: Advertising Bans And Alcohol Consumption

By John C. Luik, a public and science policy researcher who is a Senior Fellow with the Democracy Institute.

WORKING PAPER, January 16, 2004, 21 pages

Compelled "Counter Advertising" For Alcohol Products Would Tread On Free Speech

By Marc Sorini, a partner with McDermott, Will & Emery LLP's Alcohol Beverages & Products Group, and Cary Greene, a J.D. candidate at Emory Law School.

LEGAL BACKGROUNDER, September 5, 2003, 4 pages

Should Media Outlets Be Held Liable For Deceptive Advertising?

By Randal M. Shaheen, Special Counsel with the Washington, D.C. law firm Arnold & Porter LLP.

LEGAL BACKGROUNDER, July 11, 2003, 4 pages

FDA "Trans Fat" Labeling Proposal Treads On Commercial Free Speech

By Christopher A. Brown, an associate with the law firm of Sonnenschein Nath & Rosenthal in its Washington, D.C. office.

LEGAL OPINION LETTER, June 6, 2003, 2 pages

Comments Due On Federal Proposal Targeting Malt Beverages

By Richard L. Frank and Tish Eggelston Pahl, principals at the Washington, D.C. law firm Olsson, Frank and Weeda, P.C.

COUNSEL'S ADVISORY, May 23, 2003, 1 page

Commercial Speech And The Limits Of Federal Anti-Kickback Laws

By Rosemary Maxwell, a member of the healthcare and pharmaceutical regulatory practice in the Washington, D.C. office of the law firm Arnold & Porter LLP.

WORKING PAPER, May 2003, 27 pages

Federal Agency Allows Some Health Claims On Alcohol Product Labels

By Richard A. Samp, Chief Counsel to the Washington Legal Foundation

COUNSEL'S ADVISORY, March 14, 2003, 1 page

Free Speech Rights Trump Goals Of Anti-Alcohol Activists

By John J. Walsh, senior counsel to the New York City law firm Carter Ledyard & Milburn LLP

LEGAL BACKGROUNDER, March 14, 2003, 4 pages

High Court Cases May Shape First Amendment's Application To Federal Securities Laws

By Larry E. Ribstein, Richard W. and Marie L. Corman Professor of Law at the University of Illinois College of Law

LEGAL OPINION LETTER, February 14, 2003, 2 pages

Mixed Results For Free Speech In FDA Health Claims Guidance

By George W. Evans, Associate General Counsel to Pfizer, Inc., and Arnold I. Friede, Senior Corporate Counsel to Pfizer

LEGAL OPINION LETTER, January 17, 2003, 2 pages

Federal Court Ruling Impacts FDA Suppression Of Medical Speech

By George W. Evans, an Associate General Counsel, Pfizer Inc., and General Counsel—Pfizer Pharmaceuticals Group, and Arnold I. Friede, a Senior Corporate Counsel at Pfizer Inc

LEGAL OPINION LETTER, November 15, 2002, 2 pages

FDA Limits On Print Drug Ads Violate First Amendment

By Richard L. Frank and Tish Eggeston Pahl, principals at the Washington, D.C. law firm Olsson, Frank and Weeda, PC

LEGAL BACKGROUNDER, October 4, 2002, 4 pages

Kasky v Nike: U.S. Supreme Court Review Can Protect Free Public Debate

By Clark S. Judge, the Managing Director of White House Writers Group, a communications and policy consulting firm based in Washington, D.C.

LEGAL OPINION LETTER, September 6, 2002, 2 pages

FTC, Not FDA, Should Regulate Online Food Information

By Lawrence S. Ganslaw, an associate, and Kathleen M. Sanzo, a partner, in the Washington, D.C. office of the law firm Morgan Lewis LLP

LEGAL BACKGROUNDER, September 6, 2002, 4 pages

An FDA Q&A: How Does The First Amendment Limit Its Regulatory Power

By Alan R. Bennett, a partner in the Washington, D.C. office of the law firm Ropes & Gray, and Kenneth P. Berkowitz, President of KPB Associates, a Washington, D.C. consulting firm specializing in the regulation of medical communications

LEGAL BACKGROUNDER, August 23, 2002, 4 pages

State High Court Silences Businesses' Free Speech

By John J. Walsh, Senior Counsel to the New York City law firm Carter Ledyard & Milburn LLP

LEGAL OPINION LETTER, July 12, 2002, 2 pages

Proposed Limits On Prescription Drug Ads.

A Constitutional Analysis

By Bert W. Rein, a partner at the Washington, D.C. firm Wiley, Rein & Fielding, John F. Kamp, of counsel to the firm, and Rosemary C. Harold, formerly a partner with the firm and currently Deputy Director of the Mass Media Bureau at the Federal Communications Commission

WORKING PAPER, July 2002, 40 pages

Drug Ads Enhance Health By Empowering Patients

By Richard L. Manning, Ph.D., Director of Economic Policy Analysis at Pfizer Inc

LEGAL OPINION LETTER, May 10, 2002, 2 pages

DOJ Tobacco Suit Threatens Commercial Speech Rights

By Elizabeth Vella Moeller, an attorney in the Washington, D.C. office of the law firm Pillsbury Winthrop Shaw Pittman

LEGAL OPINION LETTER, April 26, 2002, 2 pages

New Judicial Precedents Expand Commercial Speech Protection

By Steven G. Brody, a partner in the New York City office of the law firm King and Spalding LLP

LEGAL BACKGROUNDER, April 5, 2002, 4 pages

Excessive FDA Scrutiny Of DTC Ads Undermines Speech Rights

By Sandra J. P. Dennis, a partner, and Lawrence S. Ganslaw, an associate, in the Washington, D.C. office of Morgan Lewis LLP

LEGAL BACKGROUNDER, May 18, 2001, 4 pages

Proposal To Deny Tax Deduction For Drug Ad Expenses Unconstitutional

By John F. Kamp, Of Counsel to the Washington, D.C. law firm Wiley, Rein & Fielding

LEGAL OPINION LETTER, October 23, 2000, 2 pages

Supreme Court Should Expand Commercial Speech Protection

By John J. Walsh, a partner with the New York law firm Carter, Ledyard & Milburn LLP

LEGAL BACKGROUNDER, September 8, 2000, 4 pages

California High Court Should Protect Commercial Speech

By Steven G. Brody, a partner in the New York City office of the law firm King and Spalding LLP and Christine P. Jackson, who is an associate with the New York law firm Cadwalader, Wickersham & Taft

LEGAL OPINION LETTER, June 9, 2000, 2 pages

Proposal To Regulate Cigar Ads And Sales Sets Dangerous Precedent

By the late William H. Lash, III, former Assistant Secretary for Market Access and Compliance at the U.S. Department of Commerce and formerly a professor at George Mason School of Law

LEGAL OPINION LETTER, January 21, 2000, 2 pages

Proposed Regulation Of Cigar Ads Unconstitutional

By William C. MacLeod and John E. Villafranco, partners with the Washington, D.C. law firm Kelley Drye Collier Shannon

LEGAL OPINION LETTER, January 21, 2000, 2 pages

■ COMMUNICATIONS AND INFORMATION TECHNOLOGY LAW

Court Refuses To Enforce Discovery Subpoena Against E-Mail Service Provider

By Jeffrey D. Neuburger, a partner in the New York office of Brown Raysman Millstein Felder & Steiner LLP and the Chair of the firm's Technology, Media and Communications Practice Group, and Maureen E. Garde, an associate at the firm and member of that practice group

LEGAL BACKGROUNDER, September 1, 2006, 4 pages

Washington Spyware Law Addresses Serious Online Commerce Threat

By The Honorable Rob McKenna, Attorney General to the State of Washington

LEGAL OPINION LETTER, August 18, 2006, 2 pages

Children's Do Not E-mail Registries: Good Politics, Bad Policy

By Will Rayel, an associate with the law firm LeBoeuf, Lamb, Greene & MacRae LLP

LEGAL BACKGROUNDER, November 18, 2005, 4 pages

United Nations Report On Internet Governance Merits Concern And Scrutiny

By Senator Norm Coleman, U.S. Senator representing the State of Minnesota

LEGAL OPINION LETTER, August 26, 2005, 2 pages

Information Security Statements Can Become Legal Obligations

By Holly K. Towle, a partner with Preston Gates Ellis LLP, a national law firm with strategic international locations. She chairs the firm's Electronics in Commerce group from her office in Seattle, Washington

LEGAL OPINION LETTER, April 22, 2005, 2 pages

Understanding and Complying With The "CAN-SPAM" Act

By Kristen J. Mathews, an associate in the New York office of the law firm Brown Raysman Millstein Felder & Steiner LLP

CONTEMPORARY LEGAL NOTE, September 2004, 45 pages

Information Security Vulnerabilities: Should We Litigate Or Mitigate?

By Jeffrey D. Neuburger, a partner in the New York office of Brown Raysman Millstein Felder & Steiner LLP and is the Chair of the firm's Technology, Media and Communications Practice Group, and Maureen E. Garde, an associate at the firm and member of that practice group

WORKING PAPER, March 2004, 17 pages

California High Court Complicates Control Of Unwanted E-mails

By Demise M. Howell, counsel to the law firm of Reed Smith LLP in its Appellate and Intellectual Property practice groups

LEGAL BACKGROUNDER, October 31, 2003, 4 pages

Oil And Water, Or Vinaigrette?: "Open Source" Software May Pose Legal Risks For Commercial Users

By Brian S. Kelly, the Co-Chair of the Venture Capital and Technology Practice Group at the Los Angeles law firm Mannatt, Phelps & Phillips, LLP

LEGAL BACKGROUNDER, June 6, 2003, 4 pages

Open-Source Software Poses Challenges For Legal And Public Policy

By Dr. David S. Evans, a senior vice president of National Economic Research Associates

LEGAL BACKGROUNDER, January 31, 2003, 4 pages

Court Ruling Wrongly Creates New Right To Sue Telecom Companies

By Steven G. Bradbury, formerly a partner, and Grant M. Duxton, an associate, both with the law firm Kirkland & Ellis LLP in its Washington, D.C. office

LEGAL OPINION LETTER, August 30, 2002, 2 pages

Anti-Terror Law Will Impact Telecom And Internet Providers

By Theresa M.B. Van Vliet, a partner in the Ft. Lauderdale office of the law firm Ruden McClosky Smith Schuster & Russell, PA

COUNSEL'S ADVISORY, November 16, 2001, 1 page

Landmark Speech Ruling Curtails FCC Cable Regulation

By Jeffrey P. Cunard, a partner, and Rebecca Tushnet, an associate, in the Washington, D.C. office of Debevoise & Plimpton

LEGAL BACKGROUNDER, June 15, 2001, 4 pages

FCC's Agenda Should Place Priority On Broad Reform

By Nicholas W. Allard, a partner with the Washington, D.C. office of the law firm Patton Boggs LLP and a Professor of Communications and Cyberlaw at George Mason University School of Law

LEGAL OPINION LETTER, May 4, 2001, 2 pages

The "E-Sign" Act: Understanding Its Four Key Provisions

By Thomas E. Crocker, a partner in the Washington, D.C. office of the law firm Alston & Bird LLP

CONTEMPORARY LEGAL NOTE, January 2001, 32 pages

Protecting Online Privacy: Government Regulation Or Free Market Initiatives?

By Douglas J. Wood, a partner with the New York law firm Reed Smith LLP

WORKING PAPER, January 2001, 42 pages

European Data Privacy Regulation And Its Impact On American Business

By John B. Reynolds, III, a partner with the Washington, D.C. law firm Wiley, Rein & Fielding

CONTEMPORARY LEGAL NOTE, September 2000, 22 pages

Uniform State Contract Law Facilitates Information Revolution

By James S. Gilmore, III, former Governor of the Commonwealth of Virginia and a partner in the Washington, D.C. office of the law firm Kelley Drye Collier Shannon

LEGAL BACKGROUNDER, July 14, 2000, 4 pages

FCC Interferes With Businesses' Free Speech And Property Rights

By Jonathan S. Massey, a Washington, D.C. attorney specializing in constitutional and appellate law

LEGAL BACKGROUNDER, March 31, 2000, 4 pages

FCC's Antiquated Approach To Regulation Harms Consumers

By Steve Pociask and Jack Rutner, former senior executives with the economic consulting firm of Joel Popkin and Company in Washington, D.C.

LEGAL BACKGROUNDER, February 18, 2000, 4 pages

Federal Courts Adapt Personal Jurisdiction Law For Disputes On The Internet

By **Edmund M. Amorisi**, formerly a student in the Washington Legal Foundation's Economic Freedom Law Clinic at George Mason University School of Law
LEGAL BACKGROUND, January 21, 2000, 4 pages

CONGRESS

President's Authority Clear On Recess Appointments Of Judges

By **H. Christopher Bartolomucci**, a partner in the Washington, D.C. office of Hogan & Hartson LLP who, from 2001 to 2003, served as Associate Counsel to President George W. Bush
LEGAL OPINION LETTER, July 9, 2004, 2 pages

Public Agency Or Private Entity? The Janus Face Of The Postal Service

By **Paul Kamenar**, Senior Executive Counsel to the Washington Legal Foundation
LEGAL OPINION LETTER, May 28, 2004, 2 pages

A Proposal For Addressing Future "Midnight Regulation"

By **Douglas R. Cox**, a partner in the Washington, D.C. office of the law firm Gibson, Dunn & Crutcher LLP
LEGAL BACKGROUND, August 10, 2001, 4 pages

CORPORATE CRIMINAL LIABILITY

Administrative Subpoenas Blur The Line Between Civil And Criminal Enforcement

By **Michael R. Sklaire**, a former Assistant United States Attorney, who is a partner in the litigation section of the law firm Williams Mullen PC
LEGAL OPINION LETTER, December 2, 2005, 2 pages

You Can Beat The Crime, But You Can't Beat The Ride: What Corporations Need To Know Before An Investigation

By **James B. Tucker** and **Amanda B. Barbour**, members of the General Litigation group at Butler, Snow, O'Mara, Stevens & Cannada, PLLC in Jackson, Mississippi
CONTEMPORARY LEGAL NOTE, October 2005, 31 pages

DOJ Prosecution Guidance Impacts Health Care Businesses

By **Karen Owen Dunlop**, a partner in the Chicago office of the law firm Sidley Austin Brown & Wood LLP
LEGAL OPINION LETTER, August 26, 2005, 2 pages

The Andersen Decision And Document Management Under Sarbanes-Oxley

By **James Dabney Miller**, a partner with the law firm King & Spalding LLP in its Washington, D.C. office
LEGAL BACKGROUND, June 17, 2005, 4 pages

Deferred Prosecution Agreements. What Is The Cost Of Staying In Business?

By **Michael R. Sklaire**, a former Assistant United States Attorney, who is a partner in the litigation section of the law firm Williams Mullen PC, and **Joshua G. Berman**, a former Assistant United States Attorney in the Southern District of New York and Trial Attorney with the Department of Justice, who is a partner with the Washington, D.C. office of Sonnenschein Nath & Rosenthal
LEGAL OPINION LETTER, June 3, 2005, 2 pages

Criminal Antitrust Enforcement: A Global Challenge

By **Steven M. Kowal**, a partner in the Chicago office of the law firm Bell, Boyd & Lloyd LLP where he heads the firm's White Collar Criminal Defense Group and is a member of the antitrust department
LEGAL BACKGROUND, October 15, 2004, 4 pages

Is Sarbanes-Oxley Vulnerable To Constitutional Challenge?

By **Steven M. Salky** and **Adam L. Rosman** who are, respectively, partner and Counsel at Zuckerman Spaeder LLP in Washington, D.C.
LEGAL BACKGROUND, September 17, 2004, 4 pages

New Federal Law Provides Additional "Sticks & Carrots" To Antitrust Prosecutors

By the late **Stanley Gorinson** and **Connie Robinson**, a partner in the Washington, D.C. office of the law firm Kilpatrick Stockton LLP
LEGAL OPINION LETTER, August 6, 2004, 2 pages

Is Criminal Enforcement Needed To Combat Alleged Corporate Conflicts Of Interest?

By **Kim Baker**, a member of the Seattle office of the law firm Williams, Kastner & Gibbs, PLLC
LEGAL BACKGROUND, July 9, 2004, 4 pages

Lawyers, Accountants, And Other Capital Market "Gatekeepers" Come Under Prosecutor's Scrutiny

By **Lanny A. Breuer**, a partner in the Washington, D.C. office of the law firm of Covington & Burling, and **Christopher J. Burke**, an associate with the firm
LEGAL BACKGROUND, August 22, 2003, 4 pages

Stewart Prosecution Imperils Business Civil Liberties

By the late **Warren L. Dennis**, a partner, and **Bruce Boyden**, an associate in the Litigation and Dispute Resolution Group at Proskauer Rose LLP's Washington, D.C. office
LEGAL BACKGROUND, October 3, 2003, 4 pages

DOJ Reaffirms And Expands Aggressive Corporate Cooperation Guidelines

By **Richard Ben-Veniste** and **Lee H. Rubin**, partners in the Washington, D.C. office of the law firm Mayer, Brown, Rowe & Maw LLP, specializing in white collar defense and corporate investigations
LEGAL BACKGROUND, April 4, 2003, 4 pages

Federal Corporate Governance: What Executives Need To Know

By **Ralph J. Caccia** and **Robert Barker**, partners in the Washington, D.C. and Atlanta offices of the law firm Powell Goldstein LLP
LEGAL BACKGROUND, November 1, 2002, 4 pages

Sarbanes-Oxley And The Cost Of Criminalization

By Peter L. Welsh, an attorney with the law firm Ropes & Gray in Boston

LEGAL BACKGROUND, August 30, 2002, 4 pages

High Court Should Review Environmental Crimes Ruling

By Thomas C. Jackson, a partner in the Washington, D C office of the law firm Baker Botts LLP

LEGAL OPINION LETTER, May 24, 2002, 2 pages

Criminalizing Business Judgment Could Stagnate U.S. Economy

By Bruce A. Hiler, partner with the law firm Caldwell, Wickersham & Taft LLP in its Washington, D C office, Ira H. Raphaelson, formerly a partner in the Washington, D C office of the law firm O'Melveny & Myers LLP, and Elizabeth H. Baird, counsel to O'Melveny & Myers LLP

LEGAL BACKGROUND, June 7, 2002, 4 pages

The Case For Reevaluating DOJ Policies On Prosecuting White Collar Crime

By Joe D. Whitley, former General Counsel of the Office of Homeland Security and currently a partner with the firm, Alston & Bird LLP, Marc N. Garber, Of Counsel to the firm, Mark A. McCarty, an associate with the firm, and Steven D. Henry, formerly an associate with the firm

WORKING PAPER, May 2002, 40 pages

Justice Department Should Study Criminalization Of Business Conduct

By The Honorable Richard Thornburgh, Counsel to the law firm Kirkpatrick & Lockhart Nicholson Graham LLP and Chairman of WLF's Legal Policy Advisory Board

COUNSEL'S ADVISORY, September 21, 2001, 1 page

Prosecutors And Courts Expand Criminalization Of Environmental Law

By Joe D. Whitley, former General Counsel of the Office of Homeland Security and currently a partner with the firm, Alston & Bird LLP and Douglas S. Arnold, a partner at the firm

LEGAL BACKGROUND, May 4, 2001, 4 pages

DOJ Must Address White Collar Prosecutors' Disrespect For Privileged Communications

By Judson W. Starr, a partner, and Brian L. Flack, an associate, in the Washington, D C office of the law firm Venable LLP

LEGAL BACKGROUND, February 23, 2001, 4 pages

Maintaining Grand Jury Witnesses' Secrecy Privilege In Parallel Civil Litigation

By the late William C. Hendricks, III and Michael R. Pauzé, a former attorney with King & Spalding LLP who is currently a trial attorney at the Department of Justice

CONTEMPORARY LEGAL NOTE, May 2000, 40 pages

CRIME AND PUNISHMENT

U.S. Attorneys Play Key Role In National Crime Fighting Strategy

By Michael M. Baylson, former U.S. Attorney for the Eastern District of Pennsylvania. He is currently a member of the law firm Duane Morris in Philadelphia

LEGAL BACKGROUND, July 27, 2001, 4 pages

The International Criminal Court: Undemocratic And Unconstitutional

By Lee A. Casey, a partner in the Washington, D C office of the law firm Baker & Hostetler LLP

LEGAL OPINION LETTER, May 18, 2001, 2 pages

DISCOVERY PROCESS AND PROCEDURE

Ruling Offers Lesson For Counsel On Electronic Discovery Abuse

By Thomas Y. Allman, Senior Counsel with the Chicago office of the law firm Mayer, Brown, Rowe & Maw LLP and former Senior Vice President, Secretary, General Counsel and Chief Compliance Officer of BASF Corporation

LEGAL BACKGROUND, October 15, 2004, 4 pages

Courts Wield Harsh Penalties For Abusing The Discovery Process

By Evelyn Alfonso, an associate in the Newark, New Jersey law firm Podvey, Sachs, Meanor, Catenacci, Hildner & Coccoziello, PC

LEGAL OPINION LETTER, January 30, 2004, 2 pages

Development Of New Federal "E-discovery" Rules Advancing

By Alfred W. Cortese, Jr., an attorney with CORTESE PLLC, Washington, D C specializing in developing and advocating strategic legislative, litigation, and regulatory responses to complex public policy issues with particular emphasis on federal and state court procedural rulemaking processes

LEGAL BACKGROUND, October 31, 2003, 4 pages

Document Management Policies In The Post-Enron Environment

By the late Warren L. Dennis, a partner, and Susan Brinkerhoff, an associate, in the Litigation and Dispute Resolution Group at Proskauer Rose LLP's Washington, D C office

LEGAL BACKGROUND, November 1, 2002, 4 pages

Electronic Discovery Emerges As Key Corporate Compliance Issue

By Jayant W. Tambe and Jonathan M. Redgrave, partners with the law firm Jones Day in its New York and Washington, D C offices, respectively

LEGAL BACKGROUND, August 9, 2002, 4 pages

A Corporate Counsel's Guide To Discovery In The Information Age

By David E. Dukes, James K. Lehman, Michael W. Hogue, and Jason Sprenkle, attorneys with the South Carolina law firm Nelson Mullins Riley & Scarborough, LLP. Foreword by The Honorable Shira A. Scheindlin of the U.S. District Court for the Southern District of New York, Introduction by Thomas Y. Allman, former Senior Vice President and General Counsel, BASF Corporation

MONOGRAPH, November 2001, 61 pages

ELECTION LAW

Campaign Finance Reform Silences Protected Free Speech

By William W. Eldridge IV, a 2002 Legal Studies Fellow at the Washington Legal Foundation

LEGAL OPINION LETTER, June 21, 2002, 2 pages

■ EMPLOYMENT LAW AND REGULATION

Abusing Independent Contractors Imperils Vital Business Model
By Richard A. Samp, Chief Counsel to the Washington Legal Foundation

LEGAL BACKGROUNDER, June 2, 2006, 4 pages

Independent Contractors Preserving The Model Is An Economic Imperative

By Karen Kerrigan, President & CEO of the Small Business & Entrepreneurship Council

LEGAL OPINION LETTER, May 16, 2006, 2 pages

New State Law Permits Private Bounty Hunter Suits Against California Employers

By Jeffrey M. Tanenbaum, a partner in the San Francisco office of the law firm Nixon Peabody LLP

COUNSEL'S ADVISORY, February 20, 2004, 1 page

California High Court Takes On Key Employment Litigation Issues

By Christina J. Imre and Jacqueline M. Jauregui, partners in the Los Angeles office of the law firm Sedgwick, Detert, Moran & Arnold LLP

LEGAL OPINION LETTER, December 5, 2003, 2 pages

New Laws And Strategies For Recruiting And Retaining Foreign Professionals

By Dan E. White, a partner with the Nashville law firm Baker, Donaldson, Bearman, Caldwell & Berkowitz

CONTEMPORARY LEGAL NOTE, March 2001, 24 pages

Court Says Statistics Alone Don't Prove Employment Discrimination

By Laura M. Franze, a partner and Labor and Employment Section Head for the Dallas office of the law firm Akin Gump Strauss Hauer & Feld, LLP

LEGAL OPINION LETTER, October 23, 2000, 2 pages

High Court Ruling Alters Employment Litigation Strategy

By Michael J. Connolly, a Shareholder of the Detroit law firm Riley Rouse & Connolly, P.C., Brent E. Zepke, Chief Counsel of Human Resources for Hercules, Inc., and Clifford J. Scharman, a Shareholder in the Washington, D.C. office of Riley Rouse & Connolly, P.C.

LEGAL BACKGROUNDER, August 25, 2000, 4 pages

Unique Settlement Expands Federal Oversight Of Contractors

By David S. Fortney, a shareholder in the law firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., and former Deputy Solicitor and Acting Solicitor of the U.S. Department of Labor in the first Bush Administration, and Consuela A. Pinto, an associate with the firm

LEGAL BACKGROUNDER, April 28, 2000, 4 pages

Labor Department Ruling Threatens Employees' Stock Options

By William J. Kilberg, P.C., a senior partner in the Washington, D.C. office of the law firm Gibson, Dunn & Crutcher LLP

LEGAL OPINION LETTER, April 28, 2000, 2 pages

Certification Of Employment Discrimination Class Actions Under Civil Rights Act Of 1991

By Laura M. Franze, a partner and Labor and Employment Section Head for the Dallas office of the law firm Akin Gump Strauss Hauer & Feld, LLP

CONTEMPORARY LEGAL NOTE, March 2000, 36 pages

■ ENDANGERED SPECIES REGULATION

Court Limits Activists' Ability To Dispute ESA Listing Decisions

By Sandra Snodgrass, an associate in the Denver office of the law firm Holland & Hart LLP where she is a member of the firm's environmental compliance group

LEGAL OPINION LETTER, June 11, 2004, 2 pages

Federal Court Raises Uncertainty For ESA "No Surprises" Policy

By David J. Hayes, a partner in the Washington, D.C. office of the law firm Latham & Watkins and the former Deputy Secretary of the Interior during the second Clinton Administration, and Janice M. Schneider, a senior associate with the firm

LEGAL BACKGROUNDER, April 30, 2004, 4 pages

Faulty Agency Science Undermines Management Of Natural Resources

By Gary G. Stevens, a partner with the Washington, D.C. law firm Saltman & Stevens, P.C.

LEGAL BACKGROUNDER, July 26, 2002, 4 pages

Landowners' Rights Advance Under Recent Species Act Ruling

By Joshua A. Bloom, a partner in the San Francisco office of Bingham McCutchen, and Peter Morrisette, an associate with the firm

LEGAL OPINION LETTER, May 24, 2002, 2 pages

Species Act's "Take" Provision Usurps State Police Powers

By The Honorable Don Stenberg, former Attorney General of Nebraska

LEGAL OPINION LETTER, February 8, 2002, 2 pages

Recent Developments Reveal "Mid-Life" Crisis For Species Act

By David J. Hayes, a partner in the Washington, D.C. office of the law firm Latham & Watkins and the former Deputy Secretary of the Interior during the second Clinton Administration

LEGAL BACKGROUNDER, December 14, 2001, 4 pages

Courts Compel Closer Review Of Species' Habitat Designations

By Lawrence R. Liebesman, a partner, and Rafe Petersen, an associate, respectively, in the Washington, D.C. office of the national law firm Holland & Knight LLP

LEGAL BACKGROUNDER, November 16, 2001, 4 pages

Court Determines FWS Has No Scientific Basis To List Fish As "Threatened"

By Daniel J. O'Hanlon, the Practice Group Manager of the Water and Natural Resources Group of the Sacramento law firm Kronick, Moskovitz, Tiedemann & Girard

LEGAL BACKGROUNDER, December 1, 2000, 4 pages

CRIME AND PUNISHMENT

DISCOVERY PROCESS AND PROCEDURE

ELECTION LAW

EMPLOYMENT LAW AND REGULATION

ENDANGERED SPECIES REGULATION

■ ENERGY

Federal Court Upholds Oil And Gas Exploration On Leased Public Lands

By L. Poe Leggette, a partner, and Bret A. Sumner, a senior associate, in the Washington, D.C. office of the law firm Fulbright & Jaworski L.L.P.

LEGAL OPINION LETTER, October 29, 2004, 2 pages

Ambitious Environmental And Energy Goals Collide In New York

By Theodore L. Garrett, a partner with the law firm Covington & Burling in Washington, D.C., and co-chair of the firm's environmental practice group

LEGAL OPINION LETTER, February 8, 2002, 2 pages

Ideology Drives Activists' Anti-Energy Policy Agenda

By Daniel E. Frank, a partner in the Washington office of the law firm Sutherland Asbill & Brennan LLP, and David A. Codevilla, an attorney in the Washington office of the law firm Kirkland & Ellis LLP

LEGAL BACKGROUND, April 20, 2001, 4 pages

■ ENVIRONMENTAL JUSTICE

Federal Court Ruling Undermines "Environmental Justice" Claims

By Harry C. Alford, the President and CEO of the National Black Chamber of Commerce

COUNSEL'S ADVISORY, January 25, 2002, 1 page

Comments Due On EPA's Revised "Environmental Justice" Guidance

By Charles Wesselhoft, an attorney with the Chicago law firm Ross & Hardies

COUNSEL'S ADVISORY, August 11, 2000, 1 page

■ ENVIRONMENTAL LITIGATION

Judge's Theory Unlikely To Support "Global Warming" Lawsuits

By David Pettit, a partner in the Los Angeles law firm Caldwell, Leslie, Newcombe & Pettit

LEGAL OPINION LETTER, May 28, 2004, 2 pages

A View From The Front Lines Environmental Activists' War On Napa Valley Wine Growers

By Stuart Smith, a co-owner of Smith-Madrone Vineyards & Winery

LEGAL BACKGROUND, September 19, 2003, 4 pages

EPA Enforcement Orders Found Lacking In Due Process Protections

By Barry M. Hartman, a partner at the Washington, D.C. law firm Kirkpatrick & Lockhart Nicholson Graham LLP, John P. Krill, a partner in the firm's Harrisburg office, and Jason E. Oyler, an associate in the Harrisburg office

LEGAL BACKGROUND, July 25, 2003, 4 pages

New Source Review Reform: The Federal Clean Air Act At A Crossroads

By Robert M. Sussman and Julia A. Hatcher, partners in the Washington, D.C. office of the law firm Latham & Watkins LLP, and Lisa A. Binder and Alejandro E. Camacho, associates with the firm

WORKING PAPER, June 2003, 18 pages

Court Properly Limits Scope Of Alien Tort Claims Act

By Peter J. Nickles and Thomas L. Cabbage III, partners, and Elie Honig, an associate, in the Washington, D.C. office of the law firm Covington & Burling

LEGAL BACKGROUND, January 17, 2003, 4 pages

Federal Environmental Laws Shouldn't Set Standards In State Liability Suits

By Manning Gasch, Jr. and D. Alan Rudlin, partners at the Richmond law firm Hunton & Williams, and Brian Schneider, an associate at the firm

WORKING PAPER, June 2002, 18 pages

State Certification Of Water Quality Doesn't Halt Citizen Suits

By Jill C. Teraoka, a partner with the California law firm Bingham McCutchen, and Shiraz D. Tangri, a senior associate with the firm

LEGAL OPINION LETTER, March 22, 2002, 2 pages

Courts Go Too Far In Allowing Environmental Citizen Suits

By Edgar B. Washburn and Christopher J. Carr, partners in the San Francisco office of the law firm Morrison & Foerster LLP

LEGAL BACKGROUND, August 10, 2001, 4 pages

Will EPA Advance An Aggressive Clean Air Enforcement Policy?

By Robert M. Sussman, a partner, and William L. Wehrum, a former senior associate, respectively, in the Washington, D.C. office of the law firm Latham & Watkins

LEGAL BACKGROUND, April 20, 2001, 4 pages

Hold Government Accountable For Its Environmental Misconduct

By Jonathan Turley, who holds the J.B. & Maurice C. Shapiro Chair for Public Interest Law at The George Washington University Law School in Washington, D.C.

LEGAL BACKGROUND, October 23, 2000, 4 pages

High Court Expands Environmental Activists' Law Enforcement Power

By John Briscoe, a partner in the San Francisco law firm Briscoe, Ivester & Bazel

LEGAL BACKGROUND, May 12, 2000, 4 pages

Court Rules EPA Must Defer To State Law In A Criminal Action

By Gerald H. Yamada, a partner in the Washington, D.C. office of the law firm O'Connor & Hannan

COUNSEL'S ADVISORY, April 14, 2000, 1 page

EPA Expands Clean Air Authority Through Enforcement Actions

By Kenneth S. Kaufman and Scott M. DuBoff, shareholders in the Washington, D.C.-based law firm of Wright & Tahsman, P.C.

LEGAL BACKGROUND, February 18, 2000, 4 pages

Litigation Campaign Obstructs Efforts To Ease Road Congestion
By Jaci Morrison, a former student in the Washington Legal Foundation's Economic Freedom Clinic at George Mason University School of Law
LEGAL BACKGROUNDER, February 18, 2000, 4 pages

■ ENVIRONMENTAL REGULATION

"Waters of the U S " Definition Remains In Doubt After Supreme Court Ruling

By George J Mannina, Jr , a Senior Partner at the law firm of O'Connor & Hannan, LLP and a member of the Environmental Practice Group at the Firm
LEGAL BACKGROUNDER, August 18, 2006, 4 pages

Europe's REACH Initiative Will Impact Trade Secrets

By Jeroen H J. den Hartog and Mark G Paulson, an attorney at the Brussell office and a partner at the Washington D C office, respectively, of the law firm Mayer, Brown, Rowe, & Maw LLP
LEGAL BACKGROUNDER, June 16, 2006, 4 pages

Is Revision of the PM_{2.5} NAAQS Requisite To Protect Public Health?

By F William Brownell and Lucinda Minton Langworthy, a partner and Counsel, respectively, to the law firm Hunton & Williams in its Washington, D C office
LEGAL BACKGROUNDER, May 5, 2006, 4 pages

Medicines And The Environment Legal And Regulatory Storms Ahead?

By George J Mannina, Jr , a Senior Partner at the law firm of O'Connor & Hannan, LLP and a member of the Environmental Practice Group at the Firm
LEGAL BACKGROUNDER, March 24, 2006, 4 pages

Comments Due On Chemical Accident Evidence Preservation Proposal

By Jane C Luxton, a partner in the Washington, D C office of the law firm King & Spalding LLP
COUNSEL'S ADVISORY, January 20, 2006, 1 page

Constitutional Principles Prohibit States From Regulating CO₂ Emissions

By Norman W Fichthorn, a partner, and Allison D. Wood, a senior associate, in the Washington, D C office of Hunton & Williams LLP
LEGAL BACKGROUNDER, September 23, 2005, 2 pages

Court Rejects Activists' Suit To Force Federal CO₂ Limits

By Peter S Glaser, a partner at Troutman Sanders LLP in the firm's Washington, D C office
LEGAL OPINION LETTER, September 23, 2005, 2 pages

Our Unscientific Regulatory War On "Carcinogens"- Time For An Armistice

By Gilbert L. Ross, M.D., Medical and Executive Director of The American Council on Science and Health, a consumer-education organization based in New York Prior to that, he practiced internal medicine for over twenty years
LEGAL BACKGROUNDER, March 25, 2005, 4 pages

Administrative Reform Needed To Ensure Quality Of Federal Agency Data

By Gerald H. Yamada, a partner at the law firm of O'Connor & Hannan, Washington, D C
LEGAL OPINION LETTER, October 1, 2004, 2 pages

Judge's Theory Unlikely To Support "Global Warming" Lawsuits
By David Pettit, a partner in the Los Angeles law firm Caldwell, Leshe, Newcombe & Pettit

LEGAL OPINION LETTER, May 28, 2004, 2 pages

What Is The Law Today? Better Check The EPA's Website

By Robert J. Martineau, Jr and Edward M. Callaway, members in the Nashville, Tennessee law firm of Waller Lansden Dortch & Davis, PLLC

LEGAL OPINION LETTER, May 14, 2004, 2 pages

"Informal" EPA Waste Regulation Treads On Due Process Protections

By Robert J. Martineau, Jr and Edward M. Callaway, members in the Nashville, Tennessee law firm of Waller Lansden Dortch & Davis, PLLC

LEGAL BACKGROUNDER, February 20, 2004, 4 pages

New European Chemicals Policy Imperils U S Economic Growth

By Jane C. Luxton, a partner in the Washington D C office of the law firm King & Spalding LLP, and Philip Moffat and Khouane Dithavong, associates with the firm

LEGAL BACKGROUNDER, August 8, 2003, 4 pages

"Greenhouse Gas" Debate Enters The Courthouse

By Peter Glaser, a partner in the Washington, D C office of the law firm Troutman Sanders LLP

LEGAL OPINION LETTER, November 14, 2003, 2 pages

EPA Enforcement Actions Would Tread On Constitutional Rights

By Gerald H. Yamada, a partner with the law firm O'Connor & Hannan in Washington, D C

LEGAL OPINION LETTER, August 23, 2002, 2 pages

Chemical Risk Data Remains Dangerously Available To The Public

By Emily Cochran, former Director of Policy and Outreach, Washington Legal Foundation

LEGAL BACKGROUNDER, August 23, 2002, 4 pages

Federal Regulation Of States' Drinking Water Unconstitutional

By The Honorable Don Stenberg, former Attorney General of Nebraska

LEGAL OPINION LETTER, July 26, 2002, 2 pages

State Agencies Play Key Role In Our Cleaner Environment

By Robert E. Roberts, Administrator of the Environmental Protection Agency's Region 8 in Denver, and formerly the Executive Director of the Environmental Council of the States

LEGAL BACKGROUNDER, December 14, 2001, 4 pages

Action Needed To End EPA's Evasion Of Public Access Rules

By Thomas R. Bartman, a vice president with the Washington, D C law firm Shapiro, Lifschutz and Schram, PC, specializing in environmental litigation and compliance counseling

LEGAL BACKGROUNDER, August 24, 2001, 4 pages

ENERGY

ENVIRONMENTAL JUSTICE

ENVIRONMENTAL LITIGATION

ENVIRONMENTAL REGULATION

High Court's Wetlands Ruling Will Broadly Impact Regulation

By Joshua A. Bloom, a partner, and Peter M. Mornissette, an associate, in the San Francisco office of the law firm Bingham McCutchen

LEGAL BACKGROUNDER, June 15, 2001, 4 pages

EPA Ignores Court Mandates To Revoke Unlawfully Issued Rules

By Richard G. Stoll, who practices environmental and administrative law with the D.C. office of Foley & Lardner

LEGAL OPINION LETTER, June 15, 2001, 2 pages

EPA's Penalty Calculation Model Must Be Fairly And Fully Reviewed

By Robert H. Fuhrman, a principal in the Washington, D.C. office of The Brattle Group

LEGAL BACKGROUNDER, May 18, 2001, 4 pages

RCRA's Statutory Scheme And Strategies For Reform

By Lynn L. Bergeson, a partner with the Washington, D.C. law firm Bergeson & Campbell, and Chris Bryant, President of the environmental, health, and safety compliance firm The Technical Group

CONTEMPORARY LEGAL NOTE, May 2001, 50 pages

Comments Sought On Petition Urging EPA To Regulate Carbon Dioxide

By Craig E. R. Jakubowicz, Director of Environmental Legal Affairs for Edison Electric Institute in Washington, D.C.

COUNSEL'S ADVISORY, March 23, 2001, 1 page

New Rule Expands Federal Oversight Of Wetlands

By Joshua A. Bloom, a partner in the San Francisco office of the law firm Bingham McCutchen

COUNSEL'S ADVISORY, March 9, 2001, 1 page

Environmental Policies Undermined Fighting Of Deadly Western Fires

By Delos Cy Jamison, a partner in the consulting firm of Jamison & Sullivan, and former Director of the Bureau of Land Management

LEGAL OPINION LETTER, November 17, 2000, 2 pages

EPA's Latest Maneuvers On "Global Warming" Legally Suspect

By Peter Glaser, a partner in the Washington, D.C. office of the law firm Troutman Sanders LLP

LEGAL BACKGROUNDER, November 3, 2000, 4 pages

Comments Due On Wetlands Proposal

By Joshua A. Bloom, a partner in the San Francisco office of the law firm Bingham McCutchen

COUNSEL'S ADVISORY, September 22, 2000, 1 page

Cooperative Efforts Can Ease Toxics Law Compliance Burden

By Lynn L. Bergeson, a partner with the Washington, D.C. law firm Bergeson & Campbell, and Chris Bryant, President of the environmental, health, and safety compliance firm The Technical Group

LEGAL BACKGROUNDER, June 9, 2000, 4 pages

EPA Relies Upon Political Science To Justify Zero Risk Standard

By Hon. Thomas J. Bliley, Senior Advisor on Government Relations with the Washington, D.C. law firm Kelley Drye Collier Shannon, and former Chairman of the U.S. House of Representatives' Commerce Committee and Representative to the Seventh Congressional District of the Commonwealth of Virginia

LEGAL BACKGROUNDER, April 14, 2000, 4 pages

EPA Lacks Legal Authority To Regulate Carbon Dioxide

By Fredrick D. Palmer, Executive Vice President, Legal and External Affairs for Peabody Coal and Peter Glaser, a partner in the Washington, D.C. office of the law firm Troutman Sanders LLP

LEGAL BACKGROUNDER, April 14, 2000, 4 pages

FALSE CLAIMS ACT

New False Claims Law Incentives Pose Risks To Contractors And States

By John T. Boese and Beth C. McClain, a partner and a special counsel, respectively, to the law firm Fried, Frank, Harris, Shriver & Jacobson LLP in its Washington, D.C. office

WORKING PAPER, June 2006, 16 pages

Quietly Expanding *Qui Tam*: Federal Law Encourages New State False Claims Acts

By John T. Boese, a partner in the Washington, D.C. office of the law firm Fried, Frank, Harris, Shriver & Jacobson LLP

LEGAL OPINION LETTER, March 10, 2006, 2 pages

Asserting Counterclaims And Third Party Claims In False Claims Act Litigation

By Ronald H. Clark, a partner in the Washington, D.C. office of Arent Fox PLLC. Mr. Clark specializes in False Claims Act litigation, consulting, and expert testimony

CONTEMPORARY LEGAL NOTE, January 2006, 17 pages

A Law Gone Rogue: Time To Return Fairness To The False Claims Act

By J. Andrew Jackson, a partner in the Government Contracts section of Dickstein Shapiro Morin & Oshinsky LLP, and Austin Fulk, an associate in the Government Contracts section of Dickstein Shapiro

LEGAL BACKGROUNDER, December 16, 2005, 4 pages

Court Limits False Claims Liability In Cases Involving Federal Grantees

By John T. Boese, a partner in the Washington, D.C. office of the law firm Fried, Frank, Harris, Shriver & Jacobson

LEGAL BACKGROUNDER, January 14, 2005, 4 pages

State False Claims Laws Pose New Challenge For Contractors

By John T. Boese, a partner in the Washington, D.C. office of the law firm Fried, Frank, Harris, Shriver & Jacobson

LEGAL BACKGROUNDER, December 20, 2002, 4 pages

DOJ False Claims Act Tactics Implicated In Court Ruling

By John T. Boese, a litigation partner in the Washington, D.C. office of Fried, Frank, Harris, Shriver & Jacobson

COUNSEL'S ADVISORY, May 12, 2001, 1 page

Court Finds False Claims Fines Subject To Constitutional Challenge

By John T. Boese, a litigation partner in the Washington, D.C. office of Fried, Frank, Harris, Shriver & Jacobson

COUNSEL'S ADVISORY, April 6, 2001, 1 page

Government Must Prove Materiality In False Claims

By Michael T. Dawkins, a shareholder of the law firm Baker, Donelson, Bearman & Caldwell in Jackson, Mississippi

LEGAL OPINION LETTER, March 9, 2001, 2 pages

DOJ Must Reevaluate Use Of False Claims Act In Medicare Disputes

By Robert Salcido, a partner in the Health Industry Practice Group of Akin Gump Strauss Hauer & Feld, LLP, in Washington, D C
LEGAL BACKGROUNDER, January 7, 2000, 4 pages

FOOD, DRUG & MEDICAL DEVICE REGULATION

Beyond The "Yuck Factor": Product Liability Implications Of Medical Device Reprocessing

By Peter J. Goss, a partner in the Minneapolis office of the law firm Faegre & Benson LLP

WORKING PAPER, September 2006, 15 pages

Multiple Sclerosis Patients V. FDA Overcaution

By Lauren Roberts, a multiple sclerosis patient living in California
LEGAL OPINION LETTER, May 19, 2006, 2 pages

European Commission Paper On "Healthy Diets" Has Implications For Food Industry

By Sarah A. Key, an associate in the Washington D C office of Foley & Lardner LLP She is a member of the Regulatory Department, its General Regulatory Practice Group, and the Food Industry and International Business Teams

COUNSEL'S ADVISORY, March 10, 2006, 1 page

Don't Dilute Drug Approval Process With Non-Scientific Criteria

By Gilbert I. Ross, M.D., the Executive Director and Medical Director of the American Council on Science and Health (ACSH), a consumer education-public health organization, and Elizabeth M. Whelan, MPH, ScD, President and founder of the American Council on Science and Health

LEGAL OPINION LETTER, March 10, 2006, 2 pages

Streamlining Appeals At FDA A Modest Proposal

By Donald E. Segal, a partner in the Food, Drug and Device Group of the law firm Alston & Bird LLP, and Sharon D. Brooks, an associate in the firm's Washington, D C office

LEGAL BACKGROUNDER, November 4, 2005, 4 pages

Courts Scrutinize FDA "Disgorgement" Demands

By Christine P. Bump, an associate with the law firm Hyman, Phelps & McNamara, PC

LEGAL BACKGROUNDER, November 4, 2005, 4 pages

FDA's Unauthorized User Fee Money Grab

By Robert A. Dormer, a director, and Kurt R. Karst, an associate, at the Washington, D C law firm Hyman, Phelps & McNamara, PC

LEGAL BACKGROUNDER, August 12, 2005, 4 pages

Conditioning FDA Approval On Agreement Not To Advertise Violates Law And Constitution

By Christopher A. Brown, an associate in the Food and Drug practice group of the law firm Sonnenschein Nath & Rosenthal LLP in its Washington, D C office, and Teisha C. Johnson, who was a summer associate with the law firm of Sonnenschein Nath & Rosenthal LLP in its Washington, D C office during the summer of 2005

LEGAL BACKGROUNDER, July 15, 2005, 4 pages

Measured, Uniform Approach Needed To Battle "Meth" Makers' Abuse Of OTC Medicines

By John A. Gilbert, Jr., a partner with the law firm Hyman, Phelps & McNamara, PC He was previously an attorney in the Drug Enforcement Administration's Office of Chief Counsel, Diversion/Regulatory Section

LEGAL BACKGROUNDER, June 3, 2005, 4 pages

Petition Seeks Transfer Of Oversight For Drug Promotion Investigations

By Richard Samp, Chief Counsel of the Washington Legal Foundation

COUNSEL'S ADVISORY, May 6, 2005, 1 page

DEA's Review Of Drug Approvals Could Limit Access To Vital Medicines

By James R. Phelps, a founding partner of the law firm Hyman, Phelps & McNamara, PC and John A. Gilbert, Jr., also a partner with the firm

LEGAL BACKGROUNDER, March 11, 2005, 4 pages

Conversations With Prescription Drug Abuse

Features The Honorable Dick Thornburgh, Counsel to the law firm Kirkpatrick & Lockhart Nicholson Graham LLP leading a discussion with The Honorable Rudolph W. Giuliani, Chairman and Chief Executive Officer, Giuliani Partners LLC

CONVERSATIONS WITH, Winter 2005, 6 pages

Making FDA Work For Patients

By Steven Walker, Regulatory Advisor to the Abigail Alliance for Better Access to Developmental Drugs, an Arlington, Virginia-based patient group dedicated to helping cancer patients and others with life-threatening and serious diseases

LEGAL BACKGROUNDER, February 25, 2005, 4 pages

What Businesses Need To Know About FDA's Plan To Combat Obesity

By Sarah A. Key, an attorney in the Washington, D C office of the law firm Foley & Lardner LLP

LEGAL OPINION LETTER, January 28, 2005, 2 pages

FDA Must Reform Its Arbitrary Drug Name Review Process

By Jeffrey N. Gibbs, a director at the Washington, D C law firm Hyman, Phelps & McNamara

LEGAL BACKGROUNDER, January 28, 2005, 4 pages

NIH Invites Public Comment On Petition Seeking Drug Price Controls

By David Price, former Senior Vice President for Legal Affairs of the Washington Legal Foundation

COUNSEL'S ADVISORY, June 25, 2004, 1 page

Losing More Than Weight. Unscientific "War" On Obesity Will Trim Personal Freedoms

By John C. Luik, a public and science policy researcher who is a Senior Fellow with the Democracy Institute

LEGAL BACKGROUNDER, May 14, 2004, 4 pages

Does Reprocessing Of Medical Devices Tread On Trademark Rights?

By James Dabney Miller, a partner with the law firm King & Spalding LLP in its Washington, D C office
LEGAL BACKGROUNDER, March 5, 2004, 4 pages

FDA Should Propose Rule On Federal Preemption Of Failure To Warn Lawsuits

By James Dabney Miller, a partner with the law firm King & Spalding LLP in its Washington, D C office.
LEGAL BACKGROUNDER, September 19, 2003, 4 pages

FDA Lacks Authority To Impose Civil Monetary Fines

By Marc J Schemeson, a partner in the Washington, D C office of the law firm Alston & Bird, and Robert J Kaufman, then a third year law student at Harvard Law School
LEGAL BACKGROUNDER, October 17, 2003, 4 pages

FDA Lacks Authority To Force Over-The-Counter Drug Switch

By Andrew S. Krulwich, a partner in the Washington, D C law firm Wiley Rein & Fielding LLP
LEGAL BACKGROUNDER, June 27, 2003, 4 pages

FDA Must Clarify Drug Makers' Ability To Publicly Defend Products

By Kathleen M Sanzo and Stephen Paul Mahinka, partners in the Washington, D C office of the law firm of Morgan Lewis, LLP
LEGAL OPINION LETTER, February 28, 2003, 2 pages

New FDA Policy On Warning Letters A Sensible Move Towards Due Process

By Larry R Pilot, a partner in the Washington, D C office of the law firm McKenna Long & Aldridge
LEGAL OPINION LETTER, January 25, 2002, 2 pages

Forcing Drugs To "OTC" Status Treads On Law And Patient Safety

By Richard F Kingham, a partner with the Washington, D C law firm Covington & Burling, practicing for nearly 30 years in the areas of food and drug law and regulation
LEGAL BACKGROUNDER, November 2, 2001, 4 pages

New Commissioner Must Adapt FDA To A New Security Role

By Alan Slobodin, former President of WLF's Legal Studies Division
LEGAL BACKGROUNDER, October 19, 2001, 4 pages

Innovative Reforms Could Reduce Time And Cost Of Drug Approvals

By Henry I Miller, a fellow at the Hoover Institution and the Competitive Enterprise Institute
LEGAL OPINION LETTER, June 15, 2001, 2 pages

Priorities For A New FDA Commissioner

By John W Bode, a partner with the Washington, D C law firm Olsson, Frank and Weeda, PC and a former Assistant Secretary of Agriculture
LEGAL BACKGROUNDER, October 5, 2001, 4 pages

Activists Use Mad Cow Scare To Advance Ideological Agendas

By David Martosko, Director of Research for The Guest Choice Network
LEGAL BACKGROUNDER, May 4, 2001, 4 pages

Does Junk Science Influence FDA Decisions On Drug Recalls?

By Carl W. Hampe, a partner with the international law firm Baker & McKenzie
LEGAL BACKGROUNDER, February 9, 2001, 4 pages

Federal Court Blocks Maine Drug Price Control Law

By Richard A Samp, Chief Counsel to the Washington Legal Foundation
COUNSEL'S ADVISORY, November 17, 2000, 1 page

FDA's Restitution "Authority" Relies Upon Flawed Court Ruling

By Jeffrey N. Gibbs, a partner with the Washington, D C law firm Hyman, Phelps & McNamara
LEGAL OPINION LETTER, October 6, 2000, 2 pages

Maine Drug Price Control Act Vulnerable To Legal Challenge

By Glenn G. Lammi, Chief Counsel to Washington Legal Foundation's Legal Studies Division
LEGAL OPINION LETTER, July 14, 2000, 2 pages

■ HEALTH CARE

Drug Price Control Fails Constitutional Test

By Grant P Bagley and Rosemary Maxwell, members of the health-care and pharmaceutical regulatory practice in the Washington D C office of the law firm Arnold & Porter LLP
LEGAL BACKGROUNDER, August 4, 2006, 4 pages

Impact On Patient Care Must Be Factor When Assessing "Gainsharing" Arrangements

By Bradley Merrill Thompson, a partner in the law firm Epstein Becker & Green PC
LEGAL BACKGROUNDER, July 15, 2005, 4 pages

Gainsharing Arrangements Present Challenging Issues For Policymakers & Participants

By Sanford V. Teplitzky, a Principal and Chairman of the Health Law Department of the law firm Ober, Kaler, Grimes & Shriver in its Baltimore office, and William T. Mathias, a Principal in the Health Law Department of Ober, Kaler, Grimes & Shriver
LEGAL BACKGROUNDER, July 1, 2005, 4 pages

Linking Medicare Coverage to Research Participation Reasonable and Necessary?

By Grant P. Bagley and Rosemary Maxwell, members of the healthcare and pharmaceutical regulatory practice in the Washington D C office of the law firm Arnold & Porter LLP
WORKING PAPER, May 2005, 23 pages

Drug Price Regulation By Lawsuit Hazardous To American's Health

By Kevin E Grady, an antitrust partner in the Atlanta office of the law firm Alston & Bird LLP, Marc J Schemeson, a food and drug partner in the firm's Washington, D C office and a former FDA Associate Commissioner, and Stewart F. Alford IV, an associate in the trial practice and antitrust groups of the firm's Atlanta office
LEGAL BACKGROUNDER, December 3, 2004, 4 pages

CMS Advises On Reimbursement For Off-Label Use Of Drugs

By David Price, former Senior Vice President for Legal Affairs of the Washington Legal Foundation
COUNSEL'S ADVISORY, October 15, 2004, 1 page

Medicare Drug Reimbursement Reform Presents Challenges And Opportunities

By Glenn G. Lammi, Chief Counsel of the Washington Legal Foundation's Legal Studies Division

LEGAL OPINION LETTER, August 20, 2004, 2 pages

Appeals Court Opens Door To Suits On Medicare Agency Decisions

By David Price, former Senior Vice President, Legal Affairs, of the Washington Legal Foundation

COUNSEL'S ADVISORY, March 5, 2004, 1 page

Better Late Than Sorry Medicare Reform Ushers In New Rules On Generic Drugs

By Alan R. Bennett, a partner with the law firm of Ropes & Gray LLP in the firm's Washington, D C office and X. Joanna Wu, Ph D, an associate with the law firm in the Boston office

LEGAL BACKGROUNDER, March 19, 2004, 4 pages

Appeals Court Opens Door To Suits On Medicare Agency Decisions

By David Price, Senior Vice President, Legal Affairs, of the Washington Legal Foundation

COUNSEL'S ADVISORY, March 5, 2004, 1 page

Accurate Drug Price Reporting: A Modest Proposal

By Grant Bagley, John Bentivoglio and Rosemary Maxwell, members of the healthcare and pharmaceutical regulatory practice in the Washington, D C office of the law firm Arnold & Porter LLP

LEGAL BACKGROUNDER, October 17, 2003, 4 pages

Research Grants And Fraud Laws. The Need To Separate Sales And Science

By David Hoffmeister, a partner with the law firm Wilson Sonsini Goodrich & Rosati

LEGAL BACKGROUNDER, July 18, 2003, 4 pages

Compliance Planning For "Voluntary" Guidelines On Drug Marketing Practices

By Susan B Geiger, a partner at the law firm Preston Gates Ellis & Rouvelas Meeds LLP in its Washington, D C office, Brian K McCalmon, an associate at Preston Gates Ellis & Rouvelas Meeds LLP, and Francie Makris, Esq, Washington D C

CONTEMPORARY LEGAL NOTES, July, 2003, 23 pages

States' Use Of Lawsuits To Regulate Drug Pricing Threatens Patients' Health

By James M. Spears and Terry S Coleman, partners in the Washington office of Ropes & Gray

LEGAL BACKGROUNDER, June 27, 2003, 4 pages

The High Cost Of Low Cost Drugs Why The "Canadian Model" Is No Panacea For Pricing

By Monte Solberg, the Canadian Alliance Member of Parliament for Medicine Hat Alberta

LEGAL OPINION LETTER, June 6, 2003, 2 pages

New CME Bias Standards Will Reduce Quality Of Medical Education

By Alan R. Bennett, a partner at Ropes & Gray and Dr. Gregory J. Glover, the founder of Pharmaceutical Law Group PC.

LEGAL OPINION LETTER, June 6, 2003, 2 pages

HHS Expanded Use Of Fraud Law's "Corporate Death Sentence" Is Legally Suspect

By Ronald H Clark, a Member of Arent Fox Kintner Plotkin & Kahn, PLLC in its Washington, D C office, Gabriel L. Imperato, the Managing Partner of Broad and Cassel's Fort Lauderdale office and head of the Firm's White Collar/Health Care Criminal and Civil Fraud Practice, and Robert Salcido, a partner at Akin Gump Strauss Hauer & Feld, LLP, in its Washington D C office

LEGAL BACKGROUNDER, June 6, 2003, 4 pages

Dramatic Changes To CME Accreditation Process Compel Scrutiny And Comment

By Richard Samp, Chief Counsel of the Washington Legal Foundation

COUNSEL'S ADVISORY, February 14, 2003, 1 page

Collusion On Structure Of Prescription Drug Formularies Would Violate Antitrust Laws

By James F Rull, senior partner and co-chair of Howrey, Simon, Arnold & White, LLP's Antitrust practice, and former Assistant Attorney General for Antitrust during the first Bush administration (1989-1992) and chair of the American Bar Association's Antitrust Section (1987-1988)

LEGAL BACKGROUNDER, November 15, 2002, 4 pages

Biting The Hand That Feeds? Generic Drugs And Abuse Of The Hatch-Waxman Law

By Robert D Bajefsky, a partner of the intellectual property law firm of Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, in Washington, D C, and Gregory Chopskue, an associate in the firm's Bio/Pharmaceutical Practice Group

LEGAL BACKGROUNDER, December 6, 2002, 4 pages

In The Eye Of The Storm Tips For Managing An FDA Recall

By David M. Hoffmeister, a partner with the law firm Wilson Sonsini Goodrich & Rosati, and Wayne L Pines, a consultant and President of Regulatory Services and Healthcare at APCO Worldwide

LEGAL BACKGROUNDER, September 6, 2002, 4 pages

No-Injury Claims Under RICO Threaten Managed Care

By Daly D E Temchine, a partner in the Washington, D C office of Epstein Becker & Green, PC, where he heads up the Health Law Litigation Department

LEGAL BACKGROUNDER, June 21, 2002, 4 pages

"Hatch-Waxman" Law Has Played Critical Role In Medical Advances

By Dr Gregory J Glover, the founder of Pharmaceutical Law Group PC

LEGAL BACKGROUNDER, June 7, 2002, 4 pages

Is America's Health Care Hindered By "Group Purchasing Organizations"?

By Garret G. Rasmussen, a partner with the Washington law firm Orrick, Herrington & Sutcliffe LLP

LEGAL BACKGROUNDER, April 26, 2002, 4 pages

Using Litigation To Regulate Drug Prices: The Assault On "AWP"
By James M. Spears, a partner, and Jeff Pearlman, an associate, respectively, in the Washington, D.C. office of the law firm Ropes & Gray

WORKING PAPER, March 2002, 22 pages

Health Care Officials Will Continue Intense Focus On Fraud
By Gabriel L. Imperato, a former Deputy Chief Counsel in the U.S. Department of Health and Human Services and current Chairman of the Criminal and Civil Health Fraud Group of the Florida law firm of Broad and Cassel

LEGAL BACKGROUNDER, June 1, 2001, 4 pages

■ IMMIGRATION LAW

State Driver's License Policies For Illegal Immigrants Should Survive Legal Attacks

By Barnaby W. Zall, an attorney in private practice in Rockville, Maryland

LEGAL OPINION LETTER, December 17, 2004, 2 pages

Coming To Terms With America's Criminal Alien Crisis
By U.S. Representative Charlie Norwood, who represents the State of Georgia's Ninth Congressional District

LEGAL OPINION LETTER, April 2, 2004, 2 pages

Courts Should Uphold Detention Of Aliens Accused Of Terrorist Acts

By Richard A. Samp, Washington Legal Foundation's Chief Counsel

LEGAL OPINION LETTER, October 19, 2001, 2 pages

Court's Illogical Ruling Could Lead To Release Of Criminal Aliens

By Barnaby W. Zall, an attorney in private practice in Rockville, Maryland

LEGAL OPINION LETTER, July 28, 2000, 2 pages

■ INSURANCE LAW

Court's Ruling Applying Credit Act To Insurers Legally Unsupportable

By Robert Detlefsen, Director of Public Policy at the National Association of Mutual Insurance Companies

LEGAL BACKGROUNDER, January 27, 2006, 4 pages

Federal Role Essential For Terrorism Risk Insurance

By John T. Leonard, President and CEO of Maine Employers' Mutual Insurance Company (MEMIC) and MEMIC Indemnity Company of New Hampshire

LEGAL BACKGROUNDER, October 7, 2005, 4 pages

Illinois Supreme Court Rejects Class Action Abuse

By Lawrence H. Mirel, formerly Commissioner of the District of Columbia Department of Insurance, Securities and Banking and currently a partner with the law firm Wiley Rein & Fielding LLP

LEGAL OPINION LETTER, August 26, 2005, 2 pages

"Disparate Impact" Theory Provides No Support For Banning Credit Scoring In Insurance

By Robert Detlefsen, Director of Public Policy at the National Association of Mutual Insurance Companies

LEGAL BACKGROUNDER, April 8, 2005, 4 pages

Self-Evaluative Privilege Would Benefit Insurers And Their Customers

By Peter A. Bisbecos, former Legislative and Regulatory Counsel of the National Association of Mutual Insurance Companies

LEGAL BACKGROUNDER, February 20, 2004, 4 pages

Treasury Department Must Correct Inequities In Money-Laundering Rules

By Thomas D. Hughes, Senior Vice President & General Counsel, and Assistant Secretary, to the Greater New York Insurance Companies in New York

LEGAL BACKGROUNDER, June 27, 2003, 4 pages

Defining Consumer Privacy: An Essential Precursor To New Regulations

By Peter Bisbecos, former Legislative and Regulatory Counsel of the National Association of Mutual Insurance Companies

LEGAL OPINION LETTER, April 11, 2003, 2 pages

An Optional Federal Charter: A Remedy For America's Antiquated Insurance Regulatory System

By Craig Berrington, former Senior Vice President and General Counsel of the American Insurance Association

LEGAL BACKGROUNDER, April 4, 2003, 4 pages

Federalizing Insurance Regulation: A Treacherous Road To Reform

By Wayne White, President and Chairman of Home Mutual Fire Insurance Company, Conway Arkansas, and Vice Chairman of the Board of Directors of the National Association of Mutual Insurance Companies

LEGAL BACKGROUNDER, April 4, 2003, 4 pages

Consumers And Markets Suffer When Lawyers Regulate Insurance

By Peter Bisbecos, former Legislative and Regulatory Counsel of the National Association of Mutual Insurance Companies, Victoria E. Fimea, Senior Counsel, Litigation, of the American Council of Life Insurers, David F. Snyder, Assistant General Counsel of the American Insurance Association, and Kenneth A. Stoller, Counsel of the American Insurance Association

LEGAL BACKGROUNDER, October 18, 2002, 4 pages

Regulators Or Juries: Who Can Best Protect Insurance Consumers?

By Peter Bisbecos, former Legislative and Regulatory Counsel of the National Association of Mutual Insurance Companies

LEGAL BACKGROUNDER, August 23, 2002, 4 pages

Lack Of Terrorism Reinsurance Threatens Economic Recovery

By Warren W. Heck, Chairman and Chief Executive Officer of Greater New York Mutual Insurance Company (GNY Insurance Companies) and its wholly owned stock subsidiaries, Insurance Company of Greater New York and Strathmore Insurance Company

LEGAL BACKGROUNDER, February 22, 2002, 4 pages

Fighting Insurance Fraud: A Priority In Pennsylvania

By The Honorable Mike Fisher, former Attorney General of the Commonwealth of Pennsylvania

LEGAL BACKGROUNDER, April 20, 2001, 4 pages

Plaintiffs' Lawyers Have No Business Regulating Insurance
By Lawrence H. Mirel, former Commissioner of the District of Columbia Department of Insurance and Securities Regulation
LEGAL BACKGROUNDER, April 6, 2001, 4 pages

Insurance Issues Crowd State And Federal Governments' Agendas
By Pamela J. Allen, former Vice President - Federal Affairs, and David Reddick, Ph.D., Market Regulation Manager, both of the National Association of Mutual Insurance Companies (NAMIC)
LEGAL BACKGROUNDER, March 23, 2001, 4 pages

Class Action Lawyers The New Insurance Regulators
By Robert L. Zeman, Vice President and Assistant General Counsel, and Michael P. Duncan, former Senior Vice President, Secretary, and General Counsel, of the National Association of Independent Insurers
LEGAL BACKGROUNDER, June 9, 2000, 4 pages

Gramm-Leach-Bliley Act Extends Business Options For Mutual Insurance Companies
By Douglas P. Faucette, a senior partner in the Washington, D.C. law firm of Muldoon, Murphy & Faucette LLP
LEGAL BACKGROUNDER, May 12, 2000, 4 pages

■ INTELLECTUAL PROPERTY

Court Rules Against Cross-Border Enforcement Of "European" Patent Rights
By Beth Z. Shaw, an attorney at the law firm Finnegan Henderson Farabow Garrett & Dunner LLP
LEGAL OPINION LETTER, October 6, 2006, 2 pages

Applying eBay Court Rejects Injunction In Patent Case
By Blair M. Jacobs, a partner with the law firm Sutherland Asbill & Brennan LLP and member of the firm's IP Litigation Group
LEGAL OPINION LETTER, July 21, 2006, 2 pages

"Inequitable Conduct" Standard For Patent Suits Is Heightened
By Peter A. Jackman, a director with the law firm Sterne, Kessler, Goldstein & Fox P.L.L.C.
LEGAL OPINION LETTER, June 16, 2006, 2 pages

Patents For Software Remain Viable And Vital In European Union
By Robert D. Becker, a partner, and Greg T. Warder, an associate, in the Palo Alto office of the law firm Mannatt, Phelps & Phillips, LLP
LEGAL OPINION LETTER, May 5, 2006, 2 pages

Supreme Court To Review Right To Automatic Injunction In Patent Cases
By Blair M. Jacobs, a partner with the law firm Sutherland Asbill & Brennan LLP and member of the firm's IP Litigation Group
COUNSEL'S ADVISORY, February 24, 2006, 1 page

Federal Court Fires A Torpedo At "Submarine" Patent Practice
By William T. Cook, an associate with Sutherland, Asbill & Brennan LLP in the firm's Atlanta office
LEGAL OPINION LETTER, February 10, 2006, 2 pages

Weathering The Perfect Storm: Product Placement And Intellectual Property
By James H. Johnson, an attorney with Sutherland, Asbill & Brennan LLP in Atlanta
LEGAL BACKGROUNDER, November 18, 2005, 4 pages

The Sincerest Form Of Flattery: China And Protection Of Intellectual Property Rights
By Ronald A. Cass, President of Cass & Associates, P.C., former Vice-Chairman of the U.S. International Trade Commission, and dean emeritus of Boston University School of Law
LEGAL BACKGROUNDER, November 4, 2005, 4 pages

Patenting Software And Business Method Inventions In The U.S. And Europe
By Michael Q. Lee, director in the Electronics Group of the law firm of Sterne, Kessler, Goldstein & Fox P.L.L.C. and James Cross, a partner of R.G.C. Jenkins & Co.
LEGAL BACKGROUNDER, October 21, 2005, 4 pages

U.S. Patent Reform And The Future Of Nanotechnology
By Steven R. Ludwig, Ph.D., a director at the Washington, D.C. law firm Sterne, Kessler, Goldstein & Fox P.L.L.C., Ted J. Ebersole, Ph.D., an associate with firm, and Donald J. Featherstone, a director at the firm
LEGAL BACKGROUNDER, August 12, 2005, 4 pages

Software Patents In Europe Promoting Innovation, Investment & Disclosure
By Beth Z. Shaw, an associate with the law firm Finnegan, Henderson, Farabow, Garrett & Dunner, LLP in Washington, D.C. Foreword by The Honorable Gerald J. Mossinghoff, Senior Counsel at the law firm Oblon, Spivak, McClelland, Maier & Neustadt and Distinguished Adjunct Professor of Law at the George Mason University School of Law
WORKING PAPER, June 2005, 40 pages

Small Entities And The "First To Invent" Patent System: An Empirical Analysis
By The Honorable Gerald J. Mossinghoff, Senior Counsel to the law firm Oblon, Spivak, McClelland, Maier & Neustadt and a former Assistant Secretary of Commerce and Commissioner of Patents and Trademarks. Featuring a foreword by Robert A. Armitage, Senior Vice President and General Counsel, Eli Lilly and Company
WORKING PAPER, April 2005, 21 pages

High Court Should Resolve Dispute Over Key Patent Law Requirement
By Christopher J. Renk, managing partner of the law firm of Banner & Witcoff, Ltd. and an adjunct professor at the Georgetown University Law Center where he teaches Patent Trial Practice, and Michael L. Krashinsky, a 2004 summer associate at the firm
LEGAL BACKGROUNDER, October 29, 2004, 4 pages

Will Federal Court Ruling Torpedo The "Submarine Patent"?
By George L. Graff, a litigation partner specializing in intellectual property law at the law firm Paul, Hastings, Janofsky & Walker LLP in New York and Adam E. Kraidin, a senior corporate associate specializing in intellectual property law at the firm
LEGAL BACKGROUNDER, April 30, 2004, 4 pages

Altering Patent Suit Proof Burden Would Chill Innovation
By Michael J. Shuster, co-chair of the law firm Fenwick & West's Bioscience Industries Group, Dan Flam, an intern with the firm, and Sasha Blaug, an analyst with the firm
LEGAL BACKGROUNDER, April 16, 2004, 4 pages

Avoiding Collisions At The Intersection Of Antitrust And Intellectual Property Laws
By Scott P. Perlman and Lily Fu Swenson, partners in the Washington, D.C. office of the law firm Mayer, Brown, Rowe & Maw LLP
CONTEMPORARY LEGAL NOTE, December 5, 2003, 38 pages

The Madrid Protocol: A Brief Primer For U.S. Trademark Holders
By Albert Tramosch, an attorney with the law firm Burns Doane Swecker & Mathis LLP in Alexandria, Virginia, and former Director of the Industrial Property Law Division of the World Intellectual Property Organization (WIPO)
CONTEMPORARY LEGAL NOTE, December 5, 2003, 25 pages

European Court Issues Encouraging Ruling On Intellectual Property
By Howard Fogt, a partner in the Washington, D.C. office of the law firm Foley & Lardner and Sophie Lignier, of counsel in the firm's Brussels office
LEGAL OPINION LETTER, October 31, 2003, 2 pages

FDA Limits On Dual Trademarks Tread On Patient Safety And Law
By Marc J. Scheineson, a partner in the Washington, D.C. office of the law firm Alston & Bird
LEGAL BACKGROUNDER, April 25, 2003, 4 pages

Court Rejects State Law Compelling Ingredient Disclosure
By David Wolf, a founding partner of Wolf, Greenfield & Sacks, PC in Boston, and Ilan N. Barzilay, an associate with the firm
LEGAL OPINION LETTER, February 28, 2003, 2 pages

"Digital Rights Management" Best Left To Private Contract
By Professor Richard A. Epstein, James Parker Hall Distinguished Service Professor of Law, The University of Chicago, and Peter and Kirsten Bedford Senior Fellow at The Hoover Institution
LEGAL BACKGROUNDER, November 15, 2002, 4 pages

Strategic Responses To "Sham Litigation" Claims In Patent Infringement Suits
By David M. Young, an attorney in the Litigation, Intellectual Property, and Antitrust practice group of the law firm Hunton & Williams in its McLean, Virginia office
WORKING PAPER, November 2002, 24 pages

High Court To Rule On Congress' Power To Extend Copyrights
By Kelly M. Slavitt, an attorney in New York City office of the law firm Thelen Reid & Priest, LLP
LEGAL BACKGROUNDER, September 20, 2002, 4 pages

Supreme Court Rules On Key Patent Infringement Doctrine
By Dawn-Marie Bey, a patent attorney with the Washington, D.C. law firm Kilpatrick Stockton LLP
LEGAL BACKGROUNDER, July 12, 2002, 4 pages

Guarding the Crown Jewels: A Guide To Protecting Your Trade Secrets
By The Honorable Arthur J. Schwab, U.S. District Court for the Western District of Pennsylvania and past Chair of Litigation in the Pittsburgh law firm Buchanan Ingersoll, PC, and David J. Porter, a shareholder with Buchanan Ingersoll, PC. Foreword by Laura Stern, Senior Vice President and General Counsel of The Clorox Company, Introduction by John K. Williamson, former Assistant General Counsel, Intellectual Property, PPG Industries and currently a partner in the Pittsburgh office of the law firm Kirkpatrick & Lockhart Nicholson Graham LLP
MONOGRAPH, February 2002, 117 pages

High Court Upholds Utility Patents On Genetically-Enhanced Seeds
By Gerald J. Mossinghoff, Senior Counsel to the Arlington, Virginia law firm Oblon, Spivak, McClelland, Maier & Neustadt PC, and a former Assistant Secretary of Commerce and Commissioner of Patents and Trademarks
LEGAL BACKGROUNDER, January 25, 2002, 4 pages

Enhancing World Health Through Global Protection Of Drug Patent Rights
By Richard Wilder, a partner in the Washington, D.C. office of the law firm Sidley Austin Brown & Wood
WORKING PAPER, November 2001, 34 pages

Supreme Court Will Rule On Key Patent Infringement Doctrine
By Glenn G. Lammi, Chief Counsel to Washington Legal Foundation's Legal Studies Division, and Gastón P. Fernández, a 2001 Washington Legal Foundation Fellow
LEGAL BACKGROUNDER, September 21, 2001, 4 pages

Supreme Court Should Confirm Patent Rights For Biotech Plants
By Warren D. Woessner, a founding partner of Schwegman, Lundberg, Woessner & Kluth in Minneapolis
LEGAL OPINION LETTER, July 27, 2001, 2 pages

New Jersey Ruling Increases Trade Secret Protection
By Christopher Walsh, formerly an associate with Collier & Basil, PC, in Somerset, New Jersey
COUNSEL'S ADVISORY, December 15, 2000, 1 page

Cooperation Key To Addressing Contentious Online Patent Issue
By James G. Gatto, a partner in the McLean, Virginia office of the law firm Pillsbury Winthrop LLP, and Brad Lennie, an associate with the Washington, D.C. office of the law firm Hunton & Williams
LEGAL BACKGROUNDER, August 25, 2000, 4 pages

Federal Appeals Court Expands "Fair Use" Copying Of Software
By James G. Gilliland, Jr., a partner in the San Francisco office of the law firm Townsend and Townsend and Crew LLP
LEGAL OPINION LETTER, July 28, 2000, 2 pages

Can Intellectual Property Be Protected On The Internet?
By Michael Bettinger, a partner with the law firm Preston Gates Ellis, LLP, where he heads the intellectual property litigation practice in the San Francisco and Palo Alto offices, and Peter Berger, an associate in the intellectual property group of the firm's Seattle office
LEGAL BACKGROUNDER, April 14, 2000, 4 pages

"Markman Hearings" Can Speed Resolution Of Patent Disputes
By Mark L. Austrian, a partner with the Washington, D C. law firm of Kelley Drye Collier Shannon
LEGAL BACKGROUNDER, January 7, 2000, 4 pages

■ INTERNATIONAL TRADE & COMPETITIVENESS

Doing Business In China: Unique Corruption Compliance Concerns And Strategies

By Judith A. Lee and James D. Slear, a partner and Of Counsel, respectively, from the law firm Gibson, Dunn & Crutcher LLP
CONTEMPORARY LEGAL NOTE, August 2006, 20 pages

Conversations With: International Trade And Non-Tariff Barriers Features The Honorable Dick Thornburgh, Counsel to the law firm Kirkpatrick & Lockhart Nicholson Graham LLP moderating a discussion with the late Professor William H. Lash, III formerly of George Mason University School of Law and former Assistant Secretary for Market Access and Compliance at the U.S.

Department of Commerce
CONVERSATIONS WITH, Fall 2005, 8 pages

Exporting Precaution: How Europe's Risk-Free Regulatory Agenda Threatens American Free Enterprise

By Lawrence A. Kogan, an international business, trade, and regulatory attorney who is CEO and Co-Director of the Institute for Trade, Standards and Sustainable Development, Inc. Foreword by The Honorable James C. Greenwood, President and CEO, Biotechnology Industry Organization. Introduction by the late William H. Lash, III, formerly a professor at George Mason University School of Law. Preface by Graham Mather, an attorney and President of the European Policy Forum. Observations by Gary E. Marchant, a professor at The College of Law at Arizona State University
MONOGRAPH, November 2005, 185 pages

Foreign Corrupt Practices Act: Keeping Enforcement And Policy Objectives Aligned

By Homer E. Moyer, Jr., a senior partner at the law firm Miller & Chevalier in its Washington, D.C. office, and a former General Counsel of the U.S. Department of Commerce
LEGAL OPINION LETTER, May 20, 2005, 2 pages

Resolving Standards Conflicts Key to U.S.-Europe Foreign Trade
By William E. Kelly, Ph.D., a Professor of Civil Engineering at Catholic University of America since 1966

LEGAL BACKGROUNDER, September 5, 2003, 4 pages

Unscientific "Precaution": Europe's Campaign To Erect New Foreign Trade Barriers

By Lawrence A. Kogan, Esq., for the National Foreign Trade Council
WORKING PAPER, September 2003, 73 pages

Liberalizing Trade In Services Critical To U.S. Economy

By Judith A. Lee, a partner in the Washington, D.C. office of the law firm Gibson, Dunn & Crutcher LLP
LEGAL BACKGROUNDER, October 18, 2002, 4 pages

SEC Expands Foreign Corruption Law Beyond Congressional Intent

By Claudius O. Sokenu, a securities litigator in the New York office of the law firm Mayer, Brown, Rowe & Maw, and a former senior attorney with the Securities and Exchange Commission, Division of Enforcement
LEGAL BACKGROUNDER, July 26, 2002, 4 pages

■ JUDICIARY & COURTS

Grand Juries In America. Relic Of The Past Or Continuing Constitutional Institution?

By The Honorable Malcolm J. Howard, U.S. District Court for the Eastern District of North Carolina. Judge Howard is a former federal prosecutor in the Office of the United States Attorney for the Eastern District of North Carolina, and former Deputy Special Counsel (Watergate) for President Nixon
WORKING PAPER, November 2005, 19 pages

President's Authority Clear On Recess Appointments Of Judges

By H. Christopher Bartolomucci, a partner in the Washington, D.C. office of Hogan & Hartson LLP who, from 2001 to 2003, served as Associate Counsel to President George W. Bush
LEGAL OPINION LETTER, July 9, 2004, 2 pages

Regulation And The Role Of The Courts. Drawing A Line In A Sandstorm

By Peter A. Bisbecos, former Director, Legislative and Regulatory Affairs, of the National Association of Insurance Companies
LEGAL BACKGROUNDER, June 25, 2004, 4 pages

Proper Management, Not Courts Can Best Control Litigation Costs

By Lawrence A. Salibra, II, former Senior Counsel of Alcan Aluminum Corporation
LEGAL OPINION LETTER, January 30, 2004, 2 pages

Financial, Securities, & Telecom Key Cases Before the Supreme Court

By Donald B. Verrilli, Chair of the law firm Jenner & Block's Telecommunications Practice and a Co-Chair of its Appellate and Supreme Court Practices
LEGAL BACKGROUNDER, December 5, 2003, 4 pages

Environment And Employment Law: Key Cases Before The Supreme Court

By Donald B. Verrilli Jr., Chair of the law firm Jenner & Block's Telecommunications Practice and Co-Chair of its Appellate and Supreme Court Practices
LEGAL BACKGROUNDER, November 14, 2003, 4 pages

Trials In "Rocket Dockets": More Than Just A Legal Strategy

By Howard Scher, a partner in the Philadelphia office of Buchanan Ingersoll, PC
LEGAL OPINION LETTER, October 17, 2003, 2 pages

Jury Duty Reform: Arizona Leads The Way

By Lewis Maltby, President of the National Workrights Institute in Princeton, New Jersey
LEGAL BACKGROUNDER, June 20, 2003, 4 pages

New Model Law Designed To Improve Jury Service In State Courts
By Victor E. Schwartz, Mark A. Behrens, and Cary Silverman, attorneys in the Public Policy Group in the Washington, D.C. office of the law firm Shook, Hardy & Bacon LLP
COUNSEL'S ADVISORY, January 17, 2003, 1 page

Action Plan Needed To Reduce "Circuit Splits" In Federal Courts
By Thomas Goldstein, a partner with Akn, Gump, Haver, Strauss & Feld LLP in Washington, D.C.
LEGAL BACKGROUNDER, October 4, 2002, 4 pages

Ruling Could Enhance Value Of "Unpublished" Decisions
By A. Thomas Carroccio, a resident in the Washington, D.C. office of the law firm Bell, Boyd & Lloyd PLLC
COUNSEL'S ADVISORY, September 8, 2000, 1 page

Increase In Unpublished Opinions Undermines Public Trust In Courts
By Lawrence A. Sahibra, II, former Senior Counsel of Alcan Aluminum Corporation
LEGAL OPINION LETTER, April 28, 2000, 2 pages

■ LAWYERS

Federal Court Draw Roadmap For Scrutiny of Attorneys' Fees in "Coupon" Settlements
By Thomas M. Smith, Counsel at McCarter & English, LLP, in the firm's New York office, and Natalie S. Watson, an Associate at McCarter & English, LLP, in the firm's Newark office
LEGAL BACKGROUNDER, April 7, 2006, 4 pages

Lawyer Conduct Rules Under Sarbanes-Oxley & State Bars Conflicts To Navigate?
By G. Thomas Stromberg, Jr., a corporate partner in Winston & Strawn LLP's Los Angeles and San Francisco offices, and Anna R. Popov, a corporate associate in Winston & Strawn's Los Angeles office
WORKING PAPER, July 2005, 18 pages

"Piggyback" Class Action Suits Don't Merit Exorbitant Fees
By Paul D. Kamenar, Senior Executive Counsel of the Washington Legal Foundation
LEGAL OPINION LETTER, October 29, 2004, 2 pages

The Sarbanes-Oxley Act Turning Lawyers Into Corporate Whistleblowers?
By Richard A. Kirby, a partner in the Washington, D.C. office of the law firm of Preston Gates Ellis & Rouvelas Meeds LLP and Dan Manno, also a partner at the firm
WORKING PAPER, August 2003, 12 pages

FTC Acts To Provide Information To Consumers Of Legal Services
By Victor E. Schwartz, Mark A. Behrens, Cary Silverman, attorneys in the Public Policy Group of Shook, Hardy & Bacon L.L.P. in Washington, D.C., and Rochelle M. Tedesco, formerly an attorney with the firm
COUNSEL'S ADVISORY, October 18, 2002, 1 page

Practicing Law After September 11th: New Rules For Lawyers And Clients
By Richard S. Levick, an attorney and President of Levick Strategic Communications, Inc., and Larry Smith, Director of Business Development with the organization
LEGAL BACKGROUNDER, January 11, 2002, 4 pages

ABA Ethics Proposal Would Create Incentive For Activist Litigation
By Robert V. Pambianco, a Washington, D.C. attorney
COUNSEL'S ADVISORY, April 6, 2001, 1 page

■ LITIGATION

State Court Rules Plaintiff's Illegal Acts Bar Tort Suit
By Margaret Oertling Cupples, a partner at the Jackson, Mississippi office of Bradley, Arant, Rose & White
LEGAL OPINION LETTER, July 21, 2006, 2 pages

Legal Storms Intensify For Lead Paint Makers
By Charles E. Redmond II, an International Business and Finance Bachelor of Arts candidate at the University of South Carolina, and was a Fellow with Washington Legal Foundation during the summer of 2006
LEGAL OPINION LETTER, September 1, 2006, 2 pages

Federal Appeals Courts Rule On Class Action Fairness Act
By Ainsley N. Dietz, the Director of Policy and Outreach of Washington Legal Foundation
COUNSEL'S ADVISORY, October 7, 2005, 1 page

Court Endorses Tort Defenses In Diet Drug Litigation
By Brennan J. Torregrossa, an associate at Dechert LLP and a member of its Mass Torts & Product Liability practice group
LEGAL BACKGROUNDER, September 23, 2005, 4 pages

Federal Court Ruling Undermines Defendants' Ability To Appeal Class Action Certifications
By Donald M. Falk, a partner in the Supreme Court and Appellate Practice Group of the law firm Mayer Brown Rowe & Maw LLP, resident in the Palo Alto office, and Fatima Goss Graves, a former associate in the firm's Washington office, now Counsel, Education and Employment, for the National Women's Law Center
LEGAL BACKGROUNDER, July 29, 2005, 4 pages

California Ruling Bolsters Suits Against Class Action Counsel
By David Price, former Senior Vice President for Legal Affairs of the Washington Legal Foundation
COUNSEL'S ADVISORY, April 22, 2005, 1 page

Agent Orange Ruling Holds Hidden Hazards For Defense Contractors
By David Price, former Senior Vice President for Legal Affairs of the Washington Legal Foundation
COUNSEL'S ADVISORY, March 25, 2005, 1 page

Public Nuisance Tort Silenced?: One Court's Stand Against "Regulation By Litigation"
By Charles H. Moellenberg, Jr., a partner in the international law firm Jones Day in its Pittsburgh office
WORKING PAPER, February 2005, 22 pages

UCC Article 2 Amendments: A Defective Product And A Flawed Process
By Holly K. Towle, a partner with Preston Gates Ellis LLP, a full-service law firm providing legal services from strategic locations in the United States and abroad
LEGAL BACKGROUNDER, February 11, 2005, 4 pages

FBI Arrests Drug Injury Claimants For Filing False Claims

By David Price, former Senior Vice President for Legal Affairs of the Washington Legal Foundation

COUNSEL'S ADVISORY, October 15, 2004, 1 page

Heavyweight Litigation: Will Public Nuisance Theories Tackle The Food Industry?

By Charles H. Moellenberg, Jr., a partner in the international law firm Jones Day in its Pittsburgh office

LEGAL BACKGROUNDER, September 3, 2004, 4 pages

Rulings Strip Away Common-Sense Tort Defense In New York State

By David Glazer, an attorney with the law firm Shafer Glazer LLP in New York City

LEGAL OPINION LETTER, August 20, 2004, 2 pages

Lawyers Beware: State High Court Ruling Expands Tort Of Malicious Prosecution

By Christina Imre, a partner in the Los Angeles office of Sedgwick, Detert, Moran & Arnold LLP, and Douglas Collodel, a special counsel with the firm

LEGAL OPINION LETTER, July 23, 2004, 2 pages

A Progress Report On Rule 23(f): Five Years Of Immediate Class Certification Appeals

By Brian Anderson, a partner in the Washington, D.C. office of O'Melveny & Myers LLP specializing in class actions and other complex litigation, and Patrick McLain, who is presently a law clerk to The Honorable Jane A. Restani of the U.S. Court of International Trade

LEGAL BACKGROUNDER, March 19, 2004, 4 pages

Proper Management, Not Courts Can Best Control Litigation Costs

By Lawrence A. Salibra, II, formerly Senior Counsel of Alcan Aluminum Corporation

LEGAL OPINION LETTER, January 30, 2004, 2 pages

Court Ruling Sets Precedent In Fight Against Lawsuit Abuse

By John S. Stadler, Counsel in the Boston office of the law firm Nixon Peabody LLP

LEGAL OPINION LETTER, August 8, 2003, 2 pages

Regulation By Litigation And The Limits Of Government Power

By Charles H. Moellenberg Jr., a partner in the Pittsburgh office of the law firm Jones Day who specializes in nationwide coordination of major product liability litigation

WORKING PAPER, October, 2003, 22 pages

Liggett Group v. Engle: A Case Study Of Class Action Abuse

By Michael I. Krauss, a professor of law at George Mason University

LEGAL BACKGROUNDER, October 31, 2003, 4 pages

Fear Of Cancer Claims After Norfolk & Western Railway v. Ayers

By Stephen B. Kinnaid, a partner in the Washington, D.C. office of Sidley Austin Brown & Wood LLP

LEGAL BACKGROUNDER, July 11, 2003, 4 pages

Nationwide Class Actions Belong In Federal Courts

By Judith Mintel, an Associate Counsel with State Farm Mutual Automobile Insurance Company

LEGAL BACKGROUNDER, June 20, 2003, 4 pages

Conversations With: How to Solve the Asbestos Litigation Crisis Features The Honorable (c) Thornburgh, Counsel to the law firm Kirkpatrick & Lockhart Nicholson Graham LLP moderating a discussion with Victor E. Schwartz, a partner with the law firm Shook Hardy & Bacon LLP, Robert E. Vagley, former President of the American Insurance Association, and William T. Gallagher, Senior Vice President, Secretary, and General Counsel of Crown Cork & Seal

CONVERSATIONS WITH, May 27, 2003, 10 pages

Applying England Woolf Rules In America Could Help Rein In Securities Class Action Suits

By Daniel J. Popeo, Chairman and General Counsel to Washington Legal Foundation (WLF), and Glenn Lammi, Chief Counsel to WLF's Legal Studies Division

LEGAL BACKGROUNDER, May 23, 2003, 4 pages

Judges Must Play Key Role In Stemming Tide Of Asbestos Litigation

By Steve Hantler, Assistant General Counsel, DaimlerChrysler Corporation

LEGAL BACKGROUNDER, May 9, 2003, 4 pages

Revised UCC Articles Erect New Hurdles For E-Commerce

By Holly K. Towle, a partner in the Seattle office of the law firm Preston Gates & Ellis LLP

LEGAL BACKGROUNDER, May 9, 2003, 4 pages

"Claims Shaving": An Emerging Threat To Rights Of Class Action Plaintiffs

By Brian P. Brooks, a litigation partner in the Washington, D.C. office of the law firm O'Melveny & Myers LLP

LEGAL BACKGROUNDER, April 25, 2003, 4 pages

Can The Lawsuit Industry Copyright Its Class Action Complaints?

By David M. Young, an attorney in the Litigation, Intellectual Property, and Anitrust practice group of the law firm Hunton & Williams in its McLean, Virginia office

LEGAL BACKGROUNDER, April 11, 2003, 4 pages

The Asbestos Litigation Crisis. Who Will Clean Up This Elephantine Mess?

By Eric Hellerman, Of Counsel to the law firm Covington & Burling in its New York City office

WORKING PAPER, March 2003, 45 pages

State Court Asbestos Rulings Provide Guidance To Congress

By John S. Stadler, Counsel in the Boston office of the law firm Nixon Peabody LLP

LEGAL OPINION LETTER, January 31, 2003, 2 pages

Court Correctly Dismisses Class Action Suit Filed Under Medicare Law

By Douglas E. Motzenbecker, a partner with the Newark, New Jersey law firm Podvey, Sachs, Meanor, Catenacci, Hildner & Cocozziello, P.C.

LEGAL OPINION LETTER, October 18, 2002, 2 pages

State Court Denies Lawyers Undeserved Fees In Tobacco Case

By Glenn G. Lammi, Chief Counsel to Washington Legal Foundation's Legal Studies Division

COUNSEL'S ADVISORY, October 18, 2002, 1 page

Kentucky High Court Rejects Medical Monitoring Actions

By Victor E. Schwartz and Mark A. Behrens, attorneys in the Public Policy Group of Shook, Hardy & Bacon, Washington, D.C., and Rochelle M. Tedesco, formerly with the firm

COUNSEL'S ADVISORY, September 6, 2002, 1 page

Remedy Without Risk: An Overview Of Medical Monitoring

By Hugh R. Whiting, Partner-in-Charge in the Houston office of the law firm Jones Day

CONTEMPORARY LEGAL NOTE, August 2002, 40 pages

Legal Ethics And Clients' Rights: Casualties Of Asbestos Litigation?

By Richard O. Faulk, Chair of the Environmental Practice Group at the Houston law firm Gardere Wynne Sewell, LLP

LEGAL BACKGROUNDER, May 24, 2002, 4 pages

Asbestos Litigation Crisis Requires Policymakers' Attention

By Richard O. Faulk, Chair of the Environmental Practice Group at the Houston law firm Gardere Wynne Sewell, LLP

LEGAL BACKGROUNDER, February 22, 2002, 4 pages

State Jury Demonstrates Deep Flaws In "Medical Monitoring"

By Kathleen L. Blaner, former special counsel with the law firm Covington & Burling in its Washington, D.C. office

LEGAL BACKGROUNDER, December 14, 2001, 4 pages

Class Action Trials Commonly Deprive Defendants Of Due Process

By James D. Griffin, a partner in the Kansas City, Missouri office of the law firm Blackwell Sanders Peper Martin LLP, and Kristopher A. Kuehn, formerly a partner in the firm's Overland Park, Kansas office

LEGAL BACKGROUNDER, November 2, 2001, 4 pages

Influential Court Tightens Class Action Certification Standards

By Mark S. Baldwin, a partner, and Sandra K. Davis, an associate, in the Hartford, Connecticut office of the law firm Brown Rudnick Freed & Gesmer

LEGAL OPINION LETTER, October 5, 2001, 2 pages

California High Court Opinion Frowns On Nationwide Class Actions

By Luanne Sacks, Paul D. Fogel and Michele Floyd, partners in the San Francisco office of the law firm Reed Smith LLP

LEGAL BACKGROUNDER, June 1, 2001, 4 pages

Is The Tide Turning On "Medical Monitoring" Claims?

By Ian Gallacher, an associate professor at American University's Washington College of Law

LEGAL BACKGROUNDER, March 23, 2001, 4 pages

Jury Innovation Project Can Improve Civil Justice System

By Gregory C. Read, a senior partner of the San Francisco office of the law firm Sedgwick, Detert, Moran & Arnold and former President of the International Association of Defense Counsel

LEGAL OPINION LETTER, December 1, 2000, 2 pages

Sellers' Participation Crucial In Ongoing Revision Of UCC Article 2

By Charles R. Keeton, a member of the law firm Frost Brown Todd LLC in Louisville, Kentucky

LEGAL OPINION LETTER, November 3, 2000, 2 pages

California High Court Gives Green Light To Legal Fees For In-House Counsels

By John H. McGuckin, Jr., Executive Vice President and General Counsel of Union Bank of California and chairman of the American Corporate Counsel Association's (ACCA) Advocacy Committee.

COUNSEL'S ADVISORY, October 23, 2000, 1 page

"No-Injury" Class Actions: Bad For Consumers and Business

By Donald J. Lough, Counsel for Special Litigation with Ford Motor Company

LEGAL BACKGROUNDER, September 22, 2000, 4 pages

State Rulings Show Florida Court Out Of Step On Tobacco Class Action

By Ronni E. Fuchs, an attorney with the law firm Dechert LLP in Philadelphia

LEGAL BACKGROUNDER, August 25, 2000, 4 pages

Foreign Nations' Tobacco Suits Don't Belong In U.S. Courts

By Kenneth J. Parsigian, a partner in the Boston law firm Goodwin, Procter & Hoar LLP

LEGAL OPINION LETTER, June 23, 2000, 2 pages

Coming To Terms On Settlement Class Actions After Amchem And Ortiz

By James C. Martin, a partner of the Los Angeles office of the law firm Reed Smith LLP

WORKING PAPER, March 2000, 38 pages

Supreme Court's Action Casts Doubt On Third Party Tort Suits

By Glenn G. Lammi, Chief Counsel to Washington Legal Foundation's Legal Studies Division

COUNSEL'S ADVISORY, January 26, 2000, 1 page

Florida High Court Fails To Intervene In Massive Class Action

By Robert V. Pambianco, a Washington, D.C. attorney

COUNSEL'S ADVISORY, January 26, 2000, 1 page

■ NATIONAL SECURITY

Court Upholds Government's Illegal Alien Detention Authority

By George M. Kraw, a partner in the San Jose, California law firm Kraw & Kraw

LEGAL OPINION LETTER, August 18, 2006, 2 pages

Activist Suits Challenging Terrorist Surveillance Should Be Dismissed

By Andrew C. McCarthy, the head of the Center for Law and Counterterrorism at the Foundation for the Defense of Democracies

LEGAL BACKGROUNDER, June 2, 2006, 4 pages

Congress Enacts Substantial Liability Protections For Public Health Emergencies

By John M. Clerici, a partner with the law firm McKenna Long & Aldridge LLP in its government contracts practice and government affairs group, Frank M. Rapoport, also a partner and focuses on government contracts, information technology, federal litigation and public health law, and Douglas B. Farry, a Managing Director in the firm's Government Affairs practice
LEGAL OPINION LETTER, February 10, 2006, 2 pages

Hamdan v Rumsfeld High Court Should Uphold Executive Wartime Powers

By Andrew C. McCarthy, a Senior Fellow at the Foundation for Defense of Democracies
LEGAL OPINION LETTER, December 16, 2005, 2 pages

Ruling Expands Judiciary's Role In Transfer of Terror Detainees

By Robert Chesney, Associate Professor of Law at Wake Forest University School of Law
LEGAL BACKGROUNDER, August 26, 2005, 4 pages

Military Commissions For Terrorists On Solid Constitutional Grounds

By Bradford A. Berenson, who served as Associate Counsel to President George W. Bush from January 2001 through January, 2003 and is currently a partner with the law firm Sidley Austin Brown & Wood LLP, and Christian M. L. Bonat, an associate at Sidley Austin Brown & Wood LLP
LEGAL BACKGROUNDER, September 17, 2004, 4 pages

Deciding The Rules For Detainees Wars Are Not Criminal Prosecutions

By George M. Kraw, a partner in the San Jose, California law firm Kraw & Kraw
LEGAL OPINION LETTER, March 19, 2004, 2 pages

Foreign War Crimes Lawsuits Against American Soldiers Threaten National Security

By Margaret D. Stock, formerly Assistant Professor, Department of Law, United States Military Academy, West Point, New York
LEGAL BACKGROUNDER, August 22, 2003, 4 pages

Courts, Military Detainees, And The War On 21st Century Terrorism

By George M. Kraw, a partner in the San Jose, California law firm Kraw & Kraw
LEGAL OPINION LETTER, May 9, 2003, 2 pages

Federal Law Provides Process For Joint Development Of Bio-Terror Vaccines

By Frank M. Rapoport, a partner in the Philadelphia and Washington, D.C. offices of the law firm McKenna Long & Aldridge LLP and John M. Clerici, a partner in the firm's Washington office
LEGAL BACKGROUNDER, April 4, 2003, 4 pages

Courts Must Respect President's Authority In Times Of War

By George M. Kraw, a partner in the San Jose, California law firm Kraw & Kraw
LEGAL OPINION LETTER, September 6, 2002, 2 pages

Courts Must Not Meddle In Military Detainment Decisions

By George M. Kraw, a partner in the San Jose, California law firm Kraw & Kraw
LEGAL OPINION LETTER, June 7, 2002, 2 pages

Flaws Undermine Use Of Alien Terrorist Removal Court

By Steven R. Valentine, a partner in the law firm Preston Gates Ellis & Rouvelas Meeds LLP, Washington, D.C.
LEGAL BACKGROUNDER, February 22, 2002, 4 pages

Securing Personal Information Key To Anti-Terror Efforts

By Barnaby Zall, Of Counsel to the law firm of Weinberg & Jacobs, LLP, in Rockville, Maryland
LEGAL BACKGROUNDER, January 11, 2002, 4 pages

"Anticipatory" Self-Defense Against Terrorism Is Legal

By Lee A. Casey and David B. Rvkan, Jr., partners in the Washington, D.C. office of the law firm Baker & Hostetler LLP
LEGAL OPINION LETTER, December 14, 2001, 2 pages

Court Should Dismiss Activists' Misguided Missile Defense Suit

By David A. Codevilla, an attorney in the Environmental Group in the Washington, D.C. office of the law firm Kirkland & Ellis LLP
LEGAL OPINION LETTER, December 14, 2001, 2 pages

What Role For The United Nations In Responding To Terrorism?

By The Honorable Richard Thornburgh, Counsel to the law firm Kirkpatrick & Lockhart Nicholson Graham LLP and Chairman of WLF's Legal Policy Advisory Board
LEGAL BACKGROUNDER, November 6, 2001, 4 pages

U.S. And International Laws Support Our War On Terrorism

By Professor John Norton Moore, Director of the Center for National Security Law at the University of Virginia and former Counselor on International Law to the Department of State
LEGAL OPINION LETTER, October 19, 2001, 2 pages

Criminal Or Military Justice For Captured Terrorists?

By Philip A. Lacovara, Senior Counsel to the law firm Mayer, Brown, Rowe & Maw LLP in New York City and a Neutral Moderator and Arbitrator with JAMS
LEGAL BACKGROUNDER, October 5, 2001, 4 pages

■ PREEMPTION

Appeals Court Ruling Embraces "PMA" Device Preemption

By Michael K. Brown and Lisa M. Baird partners in the international law firm of Reed Smith LLP who specialize in litigation involving the pharmaceutical and medical device industries
COUNSEL'S ADVISORY, July 21, 2006, 1 page

FDA Preempts "Failure-To-Warn" Pharmaceutical Liability Claims

By James Dabney Miller, a partner in the Washington, D.C. office of the law firm King & Spalding LLP
COUNSEL'S ADVISORY, January 27, 2006, 1 page

Superfund Law Preempts Contingent Fee Arrangements In Natural Resource Damages Suits

By Eric G. Lasker, a partner in the law firm of Spriggs & Hollingsworth in Washington, D.C.
LEGAL BACKGROUNDER, July 15, 2005, 4 pages

Federal Preemption Of State Tort Suits Available For "PMA" Medical Devices

By John G. Powers, a partner with the Syracuse, New York law firm Hancock & Estabrook, LLP, where he represents clients in complex commercial litigation of various types in federal and state court.
LEGAL BACKGROUNDER, May 6, 2005, 4 pages

Federal Law Preempts California's Attempt To Regulate Global Warming

By Erika Z. Jones, a partner in the Washington, D.C. office of the law firm Mayer, Brown, Rowe & Maw LLP, who is also a former Chief Counsel of the National Highway Traffic Safety Administration, and Adam C. Sloane, counsel to the firm in its Washington office
LEGAL OPINION LETTER, March 11, 2005, 2 pages

FDA Position On Federal Preemption Consistent With Law And Public Health

By Eric G. Lasker, a partner in the Washington, D.C. law firm Spriggs & Hollingsworth
LEGAL BACKGROUNDER, February 25, 2005, 4 pages

Federal Drug Law Preempts California's Proposition 65

By Gene Livingston and Dan Fuchs, attorneys in the Sacramento office of the law firm Greenberg Traugott LLP
LEGAL OPINION LETTER, August 6, 2004, 2 pages

■ PROCUREMENT LAW

Holding Battlefield Contractors Accountable. Federal "Removal" Protects Federal Interests

By David C. Hammond, a partner in the law firm of Crowell & Moring LLP specializing in government contract law
LEGAL BACKGROUNDER, April 7, 2006, 4 pages

Misaddressed Reform. The U.S. Postal Service's New Procurement Guidelines

By David P. Hendel, a shareholder with the law firm Wickwire Gavin PC in Vienna, Virginia. He concentrates his government contracts practice on Postal Service procurements
LEGAL BACKGROUNDER, January 13, 2006, 4 pages

Court Protects Contractors From Harassing Lawsuits

By J. Andrew Jackson, a partner in the Washington, D.C. office of the law firm Dickstein Shapiro Morin & Oshinsky LLP, and Charlotte Rothenberg Rosen, counsel to the firm
LEGAL OPINION LETTER, October 5, 2001, 2 pages

Rulings Stress Need For Careful Negotiation of Government Contracts

By Timothy Sullivan, a partner with the Washington, D.C. law firm Adduci, Mastriani & Schaumburg
LEGAL OPINION LETTER, November 17, 2000, 2 pages

Court Expands Government's Power To Terminate Contracts

By Thomas J. Madden, a partner at Venable LLP, Washington, D.C., where he heads the Government Contracts practice group, and Andrew S. Gold, an associate in the Government Contracts group at the firm
LEGAL BACKGROUNDER, April 14, 2000, 4 pages

■ PRODUCT LIABILITY

A Defectively Designed Suit: Deputized Trial Lawyers Twist Tort Law In Rhode Island

By Leah Lorber, formerly of counsel in the Public Policy Group in the Washington, D.C. office of Shook, Hardy & Bacon LLP and currently Director of Public Policy - Tort Reform for GlaxoSmithKline
LEGAL BACKGROUNDER, October 7, 2005, 4 pages

Conversations With: Consumer Product Regulation

Features The Honorable Dick Thornburgh, Counsel to the law firm Kirkpatrick & Lockhart Nicholson Graham LLP moderating a discussion with former Consumer Product Safety Commission Chairman Harold D. (Hal) Stratton
CONVERSATIONS WITH, July 2003, 6 pages

Pennsylvania High Court Ruling Clouds Key Product Liability Issue

By Samuel W. Silver, a partner with the law firm Schnader Harrison Segal & Lewis LLP, resident in its Philadelphia office
LEGAL OPINION LETTER, July 13, 2001, 2 pages

■ PROPERTY RIGHTS

Has The High Court Taken Away Private Property Rights?

By Lewis S. Wiener, a partner in the Washington, D.C. office of the law firm Sutherland Asbill & Brennan LLP
LEGAL BACKGROUNDER, August 12, 2005, 4 pages

Supreme Court Should Review Case Posing Key Takings Issues

By Joel R. Burcat, a partner with Saul Ewing LLP in the law firm's Harrisburg, Pennsylvania office, and Julia M. Glencer, an associate with Kirkpatrick & Lockhart Nicholson Graham LLP resident in the firm's Pittsburgh, Pennsylvania office
LEGAL BACKGROUNDER, September 20, 2002, 4 pages

High Court Should Uphold Rights Of "Temporary" Takings Victims

By Gastón P. Fernández, a 2001 Washington Legal Foundation Fellow
LEGAL OPINION LETTER, September 7, 2001, 2 pages

High Court Must Halt Judicial Erosion Of Property Rights

By Chip Searcy, a former K.K. Leggett Fellow at Washington Legal Foundation
LEGAL BACKGROUNDER, November 3, 2000, 4 pages

■ PUNITIVE DAMAGES

How Bad Is Bad? Courts Remain Split On Key Punitive Damages Issue

By David T. Biderman, a partner with the law firm Perkins Coie LLP in the firm's Santa Monica office and Gabriel Liao, an associate in the firm's Los Angeles office

LEGAL BACKGROUNDER, August 18, 2006, 4 pages

Supreme Court Should Evaluate Impact Of Punitive Damages On Entire Trial Process

By James Dabney Miller, a partner with the law firm King & Spalding LLP in its Washington, D.C. office

LEGAL BACKGROUNDER, March 25, 2005, 4 pages

A Win For Federalism: Kentucky Court Vacates Punitive Damage Award

By Theodore B. Olson, former Solicitor General of the United States and a partner with the law firm Gibson, Dunn & Crutcher LLP, where he serves as co-chair of the Appellate and Constitutional Law Practice Group, and heads the firm's crisis management team, and Thomas H. Dupree, Jr., a partner at the firm

LEGAL OPINION LETTER, December 17, 2004, 2 pages

A Punitive Damages Primer: Post-State Farm Strategies

By Christina J. Imre, a partner with the San Francisco law firm Sedgwick, Detert, Moran & Arnold LLP. Foreword by Laurel Thurston, Senior Counsel and Assistant Vice President, Republic Indemnity Company

MONOGRAPH, October 2004, 87 pages

New California Law Grants State 75% Of Punitive Damage Award

By Victor E. Schwartz, Mark A. Behrens and Cary Silverman, attorneys in the Public Policy Group of Shook, Hardy & Bacon, LLP in Washington, D.C.

LEGAL OPINION LETTER, September 3, 2004, 2 pages

The End Of The "Stung?" California Supreme Court To Review Punitive Damage Standards

By David T. Biderman, a litigation partner in Perkins Coie LLC who practices in the San Francisco and Los Angeles offices, and Kyann C. Kahn, an associate in Perkins Coie LLC who practices in the San Francisco office

LEGAL BACKGROUNDER, July 23, 2004, 4 pages

Punitive Damages After State Farm Mixed Results In The Lower Courts

By Scott E. Barton, a senior at Grinnell College and a former Institute for Humane Studies fellow at Washington Legal Foundation

LEGAL OPINION LETTER, October 31, 2003, 2 pages

State Farm Ruling Has Impact On State Punitive Damages Cases

By Paul J. Beard II, a litigation associate at the Los Angeles law firm of Hennigan, Bennett & Dorman LLP

LEGAL OPINION LETTER, July 11, 2003, 2 pages

Appeals Court To Review Defiant Punitive Damages Ruling

By Thomas H. Dupree, Jr., a partner in the Washington, D.C. office of the law firm Gibson, Dunn & Crutcher LLP

LEGAL OPINION LETTER, April 11, 2003, 2 pages

Federal Court's Exxon Ruling Sets Punitive Damages Precedent

By Thomas H. Dupree, Jr., a partner in the Washington, D.C. office of the law firm Gibson, Dunn & Crutcher LLP

LEGAL BACKGROUNDER, February 22, 2002, 4 pages

High Court Imposes New Standard For Review of Punitive Damages

By Christina J. Imre, a partner in the Los Angeles office of the law firm Sedgwick, Detert, Moran & Arnold LLP

LEGAL BACKGROUNDER, June 29, 2001, 4 pages

State High Court Justice Injects Reason Into Punitive Damages Debate

By Ellis J. Horvitz, founder of and senior partner with the Encino, California appellate law firm of Horvitz & Levy LLP, and Stephanie Rae Williams, an associate at Horvitz & Levy LLP

LEGAL OPINION LETTER, June 1, 2001, 2 pages

Mass Tort Ruling Denies Lawyers A Punitive Damages Windfall

By Ronni E. Fuchs and Carolyn H. Feeney, attorneys with the law firm Dechert LLP in Philadelphia

LEGAL BACKGROUNDER, February 9, 2001, 4 pages

Supreme Court Should Provide More Guidance On Punitive Damages

By Daniel Guglielmo, a former student in the Washington Legal Foundation Economic Freedom Clinic at George Mason University School of Law

LEGAL BACKGROUNDER, February 4, 2000, 4 pages

■ RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO)

Foreign Governments' Misuse of Federal RICO. The Case For Reform

By Ignacio Sanchez and Kevin O'Scannlain, a partner and a Counsel, respectively to the law firm DLA Piper Rudnick in its Washington, D.C. office

WORKING PAPER, May 2006, 29 pages

United States v Philip Morris High Court Review Demol Signals Demise Of DOJ's Suit

By Richard A. Samp, Chief Counsel of the Washington Legal Foundation (WLF)

COUNSEL'S ADVISORY, November 18, 2005, 1 page

High Court Has No Grounds To Review Ruling In Federal Tobacco Suit

By Stuart M. Gerson, a partner in the Washington and New York offices of the law firm of Epstein Becker & Green, P.C., and a former Assistant Attorney General for the Justice Department's Civil Division and Acting Attorney General of the United States

LEGAL BACKGROUNDER, September 9, 2005, 4 pages

PROCUREMENT LAW

PRODUCT LIABILITY

PROPERTY RIGHTS

PUNITIVE DAMAGES

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO)

■ SCIENTIFIC EVIDENCE

State High Court Rejects *Daubert* But Embraces Scientific Gatekeeping

By Ninette Byelich, an associate in the Philadelphia office of the law firm Schnader Harrison Segal & Lewis LLP and a member of the firm's Product Liability and Mass Tort practice group
LEGAL OPINION LETTER, March 5, 2004 2 pages

Epidemiologic Evidence In Public And Legal Policy: Reality Or Metaphor

By Gio Batta Gori, ScD, MPH, the director of the Health Policy Center of Bethesda, Maryland and a former deputy director at the U S National Cancer Institute
WORKING PAPER, June 2004, 33 pages

Disinterested In *Daubert*: State Courts Lag Behind In Opposing "Junk" Science

By David E. Bernstein, an Associate Professor at the George Mason University School of Law
LEGAL OPINION LETTER, June 21, 2002, 2 pages

Deeper Judicial Scrutiny Needed For Agencies' Use Of Science

By Alan Charles Raul, a partner in the Washington, D C office of the law firm Sidley Austin Brown & Wood LLP, and Julie M Zampa, an associate with the firm
LEGAL BACKGROUND, January 25, 2002, 4 pages

An Executive Order Could Bring Better Science To Regulation

By Charles D. Weller, an attorney in Cleveland whose practice focuses on antitrust, health care, and complex litigation, and David B. Graham, a partner with the law firm Baker & Hostetler LLP in Cleveland
LEGAL OPINION LETTER, August 24, 2001, 2 pages

Lawyers And Experts Risk Malpractice Suits From Peddling Junk Science

By Rolin P. Bissell, a partner with the Philadelphia law firm Schnader Harrison Segal & Lewis LLP, specializing in complex commercial litigation, including antitrust, RICO, securities, financial fraud, and corporate governments litigation, and James M. Holston, also a partner at Schnader Harrison Segal & Lewis LLP, specializing in complex commercial and tort litigation
WORKING PAPER, June, 2001, 25 pages

Trial Courts Must Create Detailed Record When Ruling On Experts

By James W. Erwin and Thomas R. Jayne, partners with the St. Louis law firm Thompson Coburn LLP
LEGAL OPINION LETTER, September 8, 2000, 2 pages

Using *Daubert* To Oppose Class Action Certification

By Alice A. Kelly, an associate with the San Francisco law firm Bingham McCutchen, and Joy L. Holley, an associate with the law firm Bryan Cave LLP in St. Louis
LEGAL BACKGROUND, August 11, 2000, 4 pages

New Procedure Extends Public Access To Government Science

By U.S. Senator Richard Shelby (R-AL), who serves as Chairman of the Senate Committee on Appropriations' Subcommittee on Transportation, and Chairman of the Senate Select Committee on Intelligence
COUNSEL'S ADVISORY, March 3, 2000, 1 page

Daubert And Its Progeny: Scientific Evidence In Product Liability Litigation

By the late Frederick T. Smith, formerly a partner with the Newark law firm McCarter & English, LLP. Foreword by John L. McGoldrick, former Executive Vice President and General Counsel, Bristol-Myers Squibb Company, and President of the company's Medical Devices Group, Introduction by The Honorable Harold R. DeMoss, Jr. of the U.S. Court of Appeals for the Fifth Circuit
MONOGRAPH, March 2000, 115 pages

■ SECURITIES REGULATION

SEC Seeks Comments On Application Of "SOX" Section 404

By Damon D. Colbert is an associate in the Washington, D.C., office of the law firm Pillsbury Winthrop Shaw Pittman LLP
COUNSEL'S ADVISORY, September 1, 2006, 1 page

Financial Interest Disclosures Can Protect Markets From "Short And Distort" Manipulators

By Alex J. Pollock, a Resident Fellow at the American Enterprise Institute
LEGAL OPINION LETTER, June 2, 2006, 2 pages

Foreign Workers Cannot Sue Under "SOX" Whistleblower Provisions

By James W. Nagle, a partner in and chair of Goodwin Procter LLP's Labor & Employment Practice in the firm's Boston office who focuses on defending corporations against claims made by employees and Leslie S. Blickenstaff, a senior counsel in the firm's Labor & Employment Practice, also in the firm's Boston office
LEGAL OPINION LETTER, February 24, 2006, 2 pages

Judge Offers Frank Assessment of Lawyer-Driven Securities Suits

By Joseph De Simone, a litigation partner and Andrew J. Calica, a litigation associate in the New York office of Mayer, Brown, Rowe & Maw LLP
LEGAL OPINION LETTER, February 24, 2006, 2 pages

Plaintiffs, Lawyers, And Short-Sellers: The Legal Status of "Dump & Sue"

By Professor Moin A. Yahya, an assistant Professor of Law at the University of Alberta. He has written a more extensive article on this subject, which is forthcoming in 39 SUFFOLK U L REV (2006)
LEGAL BACKGROUND, February 24, 2006, 4 pages

Merrill Lynch v. Dabit: The Supreme Court Examines Securities Fraud Preemption

By James Edward Maloney, a partner, and Ryan D. McConnell, an associate, both at the law firm Baker Botts LLP in the firm's Houston office
LEGAL OPINION LETTER, January 13, 2006, 2 pages

Courts Deny Plaintiff's Lawyers A Role In Enforcing Sarbanes-Oxley Section 304

By Peter L. Welsh, an associate in the Boston office of the law firm Ropes & Gray LLP. Mr. Welsh practices in the areas of securities litigation, director and officer litigation and representation, and corporate governance.

LEGAL BACKGROUNDER, January 13, 2006, 4 pages

Securities Act Section 11: A Primer And Update Of Recent Trends

By Richard A. Spehr and Joseph De Simone, litigation partners, and Andrew J. Calica, a litigation associate, in the New York office of the law firm Mayer, Brown, Rowe & Maw LLP.

CONTEMPORARY LEGAL NOTE, January 2006, 22 pages

Investigation Of Milberg Weiss May Give Rise To Civil Liability

By Terry F. Lenzner, Chairman of Investigative Group International and former federal prosecutor in the office of the U.S. Attorney for the Southern District of New York.

COUNSEL'S ADVISORY, October 21, 2005, 1 page

The Sarbanes-Oxley Act: A Personal View

By Bob Merritt, former Chief Financial Officer of Outback Steakhouse, Inc.

LEGAL OPINION LETTER, October 21, 2005, 2 pages

Delaware's Disney Decision. A Star Is Born?

By Rolin P. Bissell, a partner in the Corporate Counseling and Litigation Section of the Wilmington, Delaware law firm of Young Conaway Stargatt & Taylor, LLP.

LEGAL BACKGROUNDER, October 7, 2005, 4 pages

The Delaware Way. How We Do Corporate Law And New Challenges For Free Market Economies

By Vice Chancellor Leo E. Strine, Jr., of the Delaware Court of Chancery. Vice Chancellor Strine was Counsel to Governor Thomas R. Carper from 1993 until his appointment to the Chancery Court in 1998 and also served as a corporate litigator at Skadden, Arps, Slate, Meagher & Flom.

WORKING PAPER, September 2005, 42 pages

ERISA-Related Securities Litigation Imposes Undue Burden On Pension Plans And Participants

By Douglas E. Motzenbecker, a partner of the law firm of Podvey Meanor Catenacci Hildner Coccoziello & Chattman, P.C. in Newark, New Jersey who concentrates in employment litigation on behalf of management.

LEGAL BACKGROUNDER, July 1, 2005, 4 pages

Strict Standing Requirement For Securities Fraud Suits Upheld

By James Maloney, chair of the securities litigation section of the law firm Baker Botts, whose practice is based in the Houston office.

COUNSEL'S ADVISORY, June 3, 2005, 1 page

Lower Courts Will Determine Impact Of Supreme Court's Securities Fraud Suit Ruling

By Lyle Roberts, a partner and Paul Chalmers, a special counsel, both in the Reston, Virginia office of the law firm Wilson Sonsini Goodrich & Rosati.

LEGAL BACKGROUNDER, May 20, 2005, 4 pages

Recent SEC "Regulation FD" Action Merits Attention Of Public Companies

By Donald R. Moody, a member of the Nashville-based law firm Waller Lansden Dortch & Davis PLLC, J. Chase Cole, a member of the firm, and Gregory J. Pease, an associate with the firm.

LEGAL OPINION LETTER, May 20, 2005, 2 pages

Enron And Worldcom Settlements Reflect Need To Reexamine Director Liability Standards

By David E. Brown, Jr. and Michael P. Reed, partners in the Washington, D.C. office of the law firm Alston & Bird LLP.

LEGAL BACKGROUNDER, April 22, 2005, 4 pages

Settlements In Securities Fraud Class Actions Improving Investor Protection

By The Honorable Neil M. Gorsuch, formerly a partner with Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., and Paul B. Matey, an associate with the firm.

WORKING PAPER, April 2005, 37 pages

Judicial Oversight Of Class Action Securities Fraud Settlements

By Andrew Edison, a partner in the trial section at Bracewell & Giuliani, LLP who focuses on securities litigation matters in both state and federal courts.

LEGAL BACKGROUNDER, March 11, 2005, 4 pages

Investors Should Benefit From Court Ruling On Attorneys' Fees

By Sarah L. Reid, a partner, and Ada A. Davis, an associate, of the New York law firm Kelley Drye & Warren LLP.

LEGAL OPINION LETTER, February 11, 2005, 2 pages

"Investment Activists" Attack On Coca-Cola Company Stock May Leave Bitter Aftertaste

By Larry E. Rubenstein, Corman Professor at the University of Illinois College of Law.

LEGAL OPINION LETTER, January 28, 2005, 2 pages

Federal Court Ruling Will Impact SEC's Ability To Freeze Assets Under Sarbanes-Oxley Act

By Michael R. Sklaire, a former Assistant United States Attorney, who is a partner in the litigation section of the law firm Williams Mullen P.C., and Steven M. Goldsobel, a former federal prosecutor and partner of an international law firm who recently formed the law office of Steven Goldsobel in Los Angeles.

LEGAL OPINION LETTER, January 28, 2005, 2 pages

High Court Should Review Ruling On Securities Fraud "Safe Harbor"

By Joseph De Simone, a partner, and Matthew D. Ingber and Evan A. Creutz, associates, in the New York office of the law firm Mayer, Brown, Rowe & Maw LLP.

LEGAL OPINION LETTER, December 3, 2004, 2 pages

SEC Enforcement Action Reflects Approach On Market "Gatekeepers"

By James H. Nixon III and J. Chase Cole, partners in the Nashville, Tennessee law firm Waller Lansden Dortch & Davis, where they are members of the Securities Practice Group.

LEGAL OPINION LETTER, December 3, 2004, 2 pages

Empower Shareholders, Not Courts And Lawyers, To Deter Corporate Wrongdoing

By Patrick M. Garry, a visiting professor at the South Dakota School of Law

LEGAL BACKGROUNDER, December 3, 2004, 4 pages

The "Race To The Top" In State Corporate Law: The Delaware Model

By Rolin P. Bissell, a partner in the Corporate Counseling and Litigation Section of the Wilmington, Delaware law firm of Young Conaway Stargatt & Taylor LLP

WORKING PAPER, November 2004, 19 pages

Sarbanes-Oxley's Retroactive Impact On Fraud Suits Remains Uncertain

By Jeffrey B. Grill, a partner, and Damon D. Colbert, an associate, in the Washington, D.C. office of the law firm Pillsbury Winthrop Shaw Pittman LLP

LEGAL BACKGROUNDER, November 12, 2004, 4 pages

Corporate Governance Reforms Shouldn't Weaken Directors' Role

By Timothy Hoeffner, a partner, and Katayun Jaffari, an associate, with the law firm Saul Ewing LLP

LEGAL BACKGROUNDER, October 29, 2004, 4 pages

Cooperation In SEC Enforcement: The Carrot Becomes The Stick

By Russell G. Ryan, partner in the Washington, D.C. office of King & Spalding LLP and a former Assistant Director of Enforcement at the Securities and Exchange Commission

LEGAL BACKGROUNDER, October 1, 2004, 4 pages

Broudo v. Dura Pharmaceuticals High Court Wades Into Murky Waters Of Securities Fraud Litigation

By Lyle Roberts, a partner in the Washington, D.C. office of the law firm LeBoeuf, Lamb, Greene & MacRae LLP, Paul Chalmer and Gerard Stegmaier, a special counsel and an associate respectively, at Wilson Sonsini Goodrich & Rosati

LEGAL BACKGROUNDER, September 3, 2004, 4 pages

Key Federal Court Rules On Securities Fraud Pleading Standard

By Clifford Thau, a partner, and Gregory Zimmer, an associate in the New York office of the law firm Vinson & Elkins LLP

LEGAL OPINION LETTER, April 30 2004, 2 pages

Complaint Urges SEC & DOJ Investigation Of Short-selling In Class Action

By Paul Kamenar, Senior Executive Counsel of the Washington Legal Foundation

COUNSEL'S ADVISORY, January 16, 2004, 1 page

Lawyers, Other Corporate Advisers Face Exposure To Securities Claims

By Steven S. Scholes, a partner in the Trial Department of the law firm McDermott, Will & Emery LLP, resident in its Chicago office, and co-chair of the firm's Securities Litigation Practice Group, as well as its SEC Defense Group

LEGAL BACKGROUNDER, January 30, 2004, 4 pages

No Longer Kinder and Gentler: SEC Raises the Stakes In Settled Enforcement Actions

By Claudius O. Sokenu, a partner in the New York Office of the law firm Mayer, Brown, Rowe & Maw LLP

LEGAL BACKGROUNDER, December 5, 2003, 4 pages

Federal Court in California Dismisses Securities Fraud Suit

By Glenn G. Lamm, Chief Counsel of the Washington Legal Foundation's Legal Studies Division

COUNSEL'S ADVISORY, August 22, 2003, 1 page

SEC Enforcement: A Better Wells Process

By Mitchell E. Herr, a partner with the law firm Holland & Knight LLP.

WORKING PAPER, October, 2003, 20 pages

Analyst Conflicts, Efficient Markets And Failure To Supervise Liability

By Peter L. Welsh, an attorney with the law firm of Ropes & Gray in the areas of government enforcement, securities litigation, and corporate governance litigation

LEGAL BACKGROUNDER, October 3, 2003, 4 pages

Ruling Injects Common Sense Into Runaway Securities Fraud Suits

By Dennis P. Orr, a partner and Jennifer Mondino, an associate in the New York office of the law firm Mayer, Brown, Rowe & Maw LLP

LEGAL OPINION LETTER, September 19, 2003, 2 pages

Sarbanes-Oxley's Impact On State Corporate Governance

By David A. Kotler, a partner with the law firm Dechert LLP, and Rick Swedloff, an associate with the firm

LEGAL OPINION LETTER, July 25, 2003, 2 pages

State High Court Ruling Expands Private Securities Fraud Claims

By David Priebe, Special Counsel to the Palo Alto office of the law firm DLA Piper Rudnick, and Paul Reynolds, an associate with the firm

COUNSEL'S ADVISORY, July 25, 2003, 1 page

SEC Proxy Reform Initiative Could Have Significant Impact On Corporate Governance

By Frank G. Zarb, Jr., a partner at the Washington, D.C. law firm Morgan Lewis LLP

LEGAL BACKGROUNDER, July 18, 2003, 4 pages

Protect Investors From Plaintiffs' Lawyers' Stock Manipulation

By Victor E. Schwartz, a partner in the Washington, D.C. office of the law firm Shook, Hardy & Bacon LLP and Peter D. Bernstein, a former associate in the Business Litigation Group of Shook, Hardy & Bacon LLP in Washington, D.C.

LEGAL BACKGROUNDER, June 27, 2003, 4 pages

Bondholders State Securities Suits Pose New Threat To Wall Street

By Jeffrey W. Kilduff, a litigation partner with the law firm O'Melveny & Myers LLP and heads its Tyson's Corner, Virginia office, Elizabeth Baird, Counsel to the firm and Robert M. Stern, an associate, both in the firm's Washington, D.C. office

LEGAL BACKGROUNDER, May 23, 2003, 4 pages

New Securities Litigation Hazards The Ripple Effects Of Sarbanes-Oxley

By J. David Dantzler, Jr. and Thomas Wardell, partners in the Atlanta office of the law firm McKenna Long & Aldridge LLP, and Stacy S. Ingram, an associate with the firm
LEGAL BACKGROUNDER, May 23, 2003, 4 pages

Proposal Asks SEC To Require Disclosure Of Plaintiffs' Lawyers' Contacts With Analysts

By Victor E. Schwartz, a partner in the Washington, D.C. office of the law firm Shook, Hardy & Bacon LLP and Chairman of the firm's Public Policy Group, and Peter D. Bernstein, a former associate in the firm's Business Litigation Group
COUNSEL'S ADVISORY, April 11, 2003, 1 page

Court Invokes "Enron" As Basis For Reinstating Securities Fraud Suit

By David A. Kotler, a partner, and John Sullivan, an associate, in the Princeton, New Jersey office of the law firm Dechert LLP
COUNSEL'S ADVISORY, March 14, 2003, 1 page

New York's Martin Act Expanding Enforcement In An Era Of Federal Securities Regulation

By Robert A. McTamane, a partner in the New York City law firm Ledyard & Milburn where he chairs the Corporate Department
LEGAL BACKGROUNDER, February 28, 2003, 4 pages

SEC Complaint Urges Jurisdiction Over Plaintiffs' Lawyers

By Paul D. Kamenar, Senior Executive Counsel of the Washington Legal Foundation
COUNSEL'S ADVISORY, February 14, 2003, 1 page

Flawed Ruling Creates Liability Risk For Securities Brokers

By Michael A. Gold, a partner in the Washington, D.C. office of the law firm Baker Botts LLP
LEGAL BACKGROUNDER, January 17, 2003, 4 pages

Baseless Securities Fraud Claim Leads To Severe Judicial Sanction

By Tracy A. Nichols and Louise M. Braas, partners, and Gregory A. Haile, an associate, in the Miami, Florida office of the law firm Holland & Knight LLP
LEGAL OPINION LETTER, December 6, 2002, 2 pages

The Sarbanes-Oxley Act Of 2002 Will It Prevent Future "Enrons?"

By Robert A. McTamane, a partner in the New York City law firm Carter, Ledyard & Milburn LLP, where he chairs the Corporate Department
LEGAL BACKGROUNDER, August 9, 2002, 4 pages

New SEC Disclosure Proposals Require Public Companies' Attention

By Linda L. Griggs, a partner, Scott D. Museles, of counsel, and Ross H. Parr, an associate, respectively, in the Washington, D.C. office of the law firm Morgan Lewis LLP
LEGAL OPINION LETTER, July 26, 2002, 2 pages

Public Financial Disclosure In The Post-Enron Era

By Linda L. Griggs, George G. Yearsich, and David A. Sirignano, partners in the Washington, D.C. office of the law firm Morgan Lewis LLP
LEGAL BACKGROUNDER, March 22, 2002, 4 pages

Aftermath Of Enron May Test Limits On Professionals' Liability
By Larry E. Ribstein, a professor at the University of Illinois College of Law

LEGAL OPINION LETTER, March 22, 2002, 2 pages

Enron Provides Lessons On Audits For Accountants And Public Companies

By David Priebe, Special Counsel at the law firm DLA Piper Rudnick, Palo Alto, California, and Henry C. Montgomery, the Chairman of Montgomery Financial Services Corporation, San Mateo, California

LEGAL BACKGROUNDER, March 8, 2002, 4 pages

SEC Self-Policing Policy Presents Benefits And Pitfalls

By Richard A. Spehr, a litigation partner in the New York office of the law firm Mayer, Brown, Rowe & Maw LLP, and Claudius O. Sokenu, a partner with the firm, and a former senior attorney with the U.S. Securities and Exchange Commission, Division of Enforcement

LEGAL BACKGROUNDER, January 25, 2002, 4 pages

Court Strikes Blow Against Lawyer-Driven Securities Suits

By Phillip R. Kaplan, a partner in the Newport Beach, California office of the law firm O'Melveny & Myers LLP
LEGAL BACKGROUNDER, January 11, 2002, 4 pages

Auctions For Lead Counsel In Securities Fraud Suits Ruled Improper

By Michael L. Kichline, a partner, and William M. McSwain, an associate, in the Financial Services and Securities Litigation Practice Group with the law firm Dechert LLP in Philadelphia
LEGAL BACKGROUNDER, January 11, 2002, 4 pages

Financial Fraud Lawsuits The Case For Stricter Judicial Scrutiny

By Shirli Fabbri Weiss, a partner in the San Diego office of the law firm DLA Piper Rudnick and David Priebe, Special Counsel in the firm's Palo Alto office
WORKING PAPER, August 2001, 26 pages

SEC "Fair Disclosure" Rule Is Constitutionally Suspect

By Larry E. Ribstein, a professor at the University of Illinois College of Law
LEGAL OPINION LETTER, October 6, 2000, 2 pages

SEC "Fair Disclosure" Proposal Can Chill Market Communications

By Daniel L. Goelzer, a member of the Public Company Accounting Oversight Board, formerly a partner in the Washington, D.C. office of the law firm Baker & McKenzie, as well as a former General Counsel of the SEC
LEGAL OPINION LETTER, March 17, 2000, 2 pages

SEC "Tombstone Ad" Restrictions Constitutionally Suspect

By Larry Akiyama, a former student in the Washington Legal Foundation's Economic Freedom Law Clinic at George Mason University School of Law
LEGAL BACKGROUNDER, January 21, 2000, 4 pages

Federal Courts Deeply Divided Over Securities Fraud Intent Standard

By Jay A. Dubow and Laura E. Krabill, attorneys with the Philadelphia law firm Wolf, Block, Schorr & Solis-Cohen LLP
LEGAL BACKGROUNDER, January 21, 2000, 4 pages

■ SENTENCING GUIDELINES

Federal Circuit Courts Send Mixed Messages On Sentencing
By James Flanagan, a second year law student at the Catholic University of America Columbus School of Law and a fellow with Washington Legal Foundation's Legal Studies Division
LEGAL OPINION LETTER, September 22, 2006, 2 pages

Avoiding Disparities Between Sentences Of Co-Defendants Is A Legitimate Sentencing Goal

By Brian M. Heberlig, a partner in the Washington, D.C. office of Steptoe & Johnson LLP, and a member of the defense team in *United States v Ebberts*
LEGAL OPINION LETTER, April 7, 2006, 2 pages

Future Of The "Feeney Amendment" After High Court's Sentencing Rulings

By Shannon Thyme Klinger, formerly a partner in the Washington, D.C. office of Alston & Bird LLP and William Sinclair, an associate in the Atlanta office of Alston & Bird LLP
LEGAL BACKGROUNDER, February 11, 2005, 4 pages

Comments Due On Possible Revisions To Corporate Sentencing Guidelines

By Barry Hartman, a partner in the Washington, D.C. office of the law firm Kirkpatrick & Lockhart Nicholson Graham LLP
COUNSEL'S ADVISORY, May 10, 2002, 1 page

■ SPECIAL INTEREST ACTIVISM

Separation Of Powers, ABA Style "Signing Statements" Report At Odds With Constitution

By Timothy E. Flanagan, a Senior Vice President and Deputy General Counsel at Tyco International, and David B. Rivkin, Jr. and Lee A. Casey, partners in the Washington D.C. office of law firm Baker & Hostetler LLP
LEGAL BACKGROUNDER, September 22, 2006, 4 pages

Federal Court Applies Brakes To Alien Tort Statute Litigation

By Konrad L. Cailteux, a partner with Weil, Gotshal & Manges LLP in the firm's New York office and B. Keith Gibson, an associate with the firm, also in its New York office
COUNSEL'S ADVISORY, February 10, 2006, 1 page

"Alien Tort Statute" Shakedown: Court Must Arrest New Attempt To Expand Mischievous U.S. Law

By Konrad L. Cailteux, a partner and B. Keith Gibson, an associate in the New York office of the law firm Weil, Gotshal & Manges LLP
LEGAL BACKGROUNDER, January 14, 2005, 4 pages

High Stakes Communications: Wishful Thinking Vs. Real World Effectiveness

By Eric Dezenhall, the President of Dezenhall Resources, Ltd., and author of four books, including the non-fiction study, *Nail 'em! Confronting High Profile Attacks on Celebrities and Businesses* and the new damage control novel, *Shakedown Beach*
LEGAL BACKGROUNDER, August 20, 2004, 4 pages

Losing More Than Weight: Unscientific "War" On Obesity Will Trim Personal Freedoms

By John C. Luik, a public and science policy researcher who is a Senior Fellow with the Democracy Institute
LEGAL BACKGROUNDER, May 14, 2004, 4 pages

Judicial Opinion Exposes Flaws In Suits Under Alien Tort Statute

By Konrad L. Cailteux, a partner in the New York office of the law firm Weil, Gotshal & Mangers LLP, and Nina Nagler, an associate with the firm
LEGAL BACKGROUNDER, August 8, 2003, 4 pages

■ STATE LAW DEVELOPMENTS

Insurer Notification Rule Prejudices New York Businesses

By David A. Glazer, a partner in the firm of Shafer Glazer LLP
LEGAL BACKGROUNDER, August 12, 2005, 4 pages

Avoiding And Settling State Attorney General Lawsuits

By Don Stenberg, who served as Nebraska's Attorney General from 1991 to 2003 and is presently Of Counsel to the Omaha, Nebraska law firm of Erickson & Sederstrom
LEGAL BACKGROUNDER, May 28, 2004, 4 pages

State Courts Should Reject Nationwide Class Status For Consumer Fraud Lawsuits

By Ronnu E. Fuchs, a partner in the Philadelphia law firm Dechert LLP
LEGAL BACKGROUNDER, December 6, 2002, 4 pages

Free Commerce In Wine: Trapped In A Tangled Legal Web

By John A. Hinman, a partner with the San Francisco law firm Hinman & Carmichael, and Robert T. Wright, Jr., a member in the Miami office of the law firm Coffey & Wright, LLP
LEGAL BACKGROUNDER, June 23, 2000, 4 pages

21st Amendment Grants States Broad Authority To Regulate Distribution Of Alcohol

By C. Boyden Gray, former White House Counsel in the George H.W. Bush Administration and currently a partner with the Washington, D.C. law firm Wilmer Hale LLP
LEGAL BACKGROUNDER, March 17, 2000, 4 pages

■ SUPERFUND

Constitutional Challenge To Superfund Implicates Limits On Federal Agencies' Power

By Philip Allen Lacovara, Senior Counsel to the law firm Mayer, Brown, Rowe & Maw LLP in New York City and a Neutral Moderator and Arbitrator with JAMS, and Anita S. Krishnakumar, an associate with the law firm Mayer, Brown, Rowe & Maw LLP in New York City
LEGAL BACKGROUNDER, April 6, 2001, 4 pages

Court Issues Partial Rebuke To Lawyer-Driven Superfund Suits

By Jill Cooper Teraoka, a partner, and Greg A. Christianson, an associate, both in the Los Angeles office of the law firm Bingham McCutchen

LEGAL BACKGROUNDER, March 9, 2001, 4 pages

State Court Ruling Undermines Retroactive Superfund Liability

By Peter J. Nickles, a partner with the Washington, D C. law firm Covington & Burling

LEGAL BACKGROUNDER, July 28, 2000, 4 pages

When Is A Dissolved Partnership Liable For Superfund Costs?

By Kouroush Sabet-Payman, a student in the Washington Legal Foundation Economic Freedom Clinic at George Mason University School of Law

LEGAL BACKGROUNDER, February 18, 2000, 4 pages

TORT LIABILITY

Legal Reform Inches Along In Illinois

By Edward D. Murnane, President of the Illinois Civil Justice League

LEGAL BACKGROUNDER, September 22, 2006, 4 pages

Medical Monitoring Claim Pursued In New York State

By Sean Wajert, a partner at Dechert LLP

LEGAL OPINION LETTER, June 2, 2006, 2 pages

Federal Court Finds Medical Monitoring Tort Unavailable In Texas

By Shawn D Bryant, an attorney with the law firm Spriggs & Hollingsworth in Washington, D C

COUNSEL'S ADVISORY, April 21, 2006, 1 page

Impending Legal Attacks On Food Ads Should Not Be Welcome In Court

By Scott A Elder, a partner, and Anna Aven Sumner, an associate, with Alston & Bird LLP in the firm's Atlanta office

LEGAL BACKGROUNDER, March 10, 2006, 4 pages

Regulated Industries Benefit From Illinois Consumer Protection Ruling

By Victor E. Schwartz, a partner in the law firm of Shook, Hardy & Bacon LLP in Washington D C and Cary Silverman, an associate with the firm

LEGAL BACKGROUNDER, February 10, 2006, 4 pages

Medical Monitoring Innovative New Remedy Or Money For Nothing?

By Steven J Boranian, a partner in Reed Smith LLP's San Francisco office, and Kevin M. Hara, a litigation associate in the firm's Oakland office

WORKING PAPER, January 2006, 23 pages

Michigan Court Ruling Advances Trend On Medical Monitoring

By Mark Herrmann, a partner, and Brian Ray, an associate, in the Cleveland office of Jones Day

LEGAL BACKGROUNDER, August 26, 2005, 4 pages

State Class Action Reform: Lessons From Texas

By Pete Schenkkan, a partner with the law firm Graves Dougherty Heaton & Moody, PC in Austin, Texas

LEGAL BACKGROUNDER, July 29, 2005, 4 pages

State Consumer Protection Laws Elevate Food Company Liability Risks

By Scott A Elder, a partner, and Anna Aven Sumner, an associate, with Alston & Bird LLP in the firm's Atlanta office

LEGAL BACKGROUNDER, July 29, 2005, 4 pages

Michigan High Court Rejects Claim For No-Injury Medical Monitoring

By Leah Lorber, formerly of counsel in the Public Policy Group in the Washington, D C office of Shook, Hardy & Bacon LLP and currently Director of Public Policy - Tort Reform for GlaxoSmithKline

LEGAL OPINION LETTER, July 29, 2005, 2 pages

Court Dramatically Expands Strict Liability Tort Theory

By David T Biderman, a partner with the law firm Perkins Coie LLP in the firm's Santa Monica office, and David R. East, an associate in the firm's Seattle office

LEGAL BACKGROUNDER, June 3, 2005, 4 pages

Conversations With. Legal Reform - A View From The States Features The Honorable Dick Thornburgh, Counsel to the law firm Kirkpatrick & Lockhart Nicholson Graham LLP moderating a discussion with Florida Governor Jeb Bush, former Governor of Michigan and current President and CEO of the National Association of Manufacturers John Engler, and Steve Hantler, Assistant General Counsel to DaimlerChrysler and Chairman of the American Justice Partnership

CONVERSATIONS WITH, Spring 2005, 10 pages

Once Again .Ohio Legislators Approve Comprehensive Tort Reform

By Kurtis A Tunnell, Anne Marie Sferra Vorys and Miranda Creviston Motter who have all worked extensively on tort reform efforts in Ohio Mr Tunnell is a partner with Brcker & Eckler LLP and serves as legal counsel to the Ohio Alliance for Civil Justice (OACJ) Ms Sferra Vorys is a partner in the firm's litigation department Ms Creviston Motter is an Associate in the firm's government relations department

LEGAL BACKGROUNDER, May 20, 2005, 4 pages

My "Big Fat" Update Courts Disserve Rule Of Law In Food Lawsuits Decisions

By Michael I Krauss, a professor of law at George Mason University

LEGAL BACKGROUNDER, May 6, 2005, 4 pages

Mississippi High Court Provides Clear Guidance On Mass Torts Through Asbestos Ruling

By Margaret Oertling Cupples, a partner in the Jackson, Mississippi office of the law firm Bradley Arant Rose & White LLP

LEGAL BACKGROUNDER, April 22, 2005, 4 pages

Conversations With: Legal Reform In Mississippi

Features The Honorable Dick Thornburgh, Counsel to the law firm Kirkpatrick & Lockhart Nicholson Graham LLP leading a discussion with The Honorable Haley Barbour, Governor of Mississippi

CONVERSATIONS WITH, Spring 2005, 6 pages

State High Court Ruling Departs From Tort Principles In Consumer Protection Cases

By Victor E. Schwartz, a partner in the law firm of Shook, Hardy & Bacon LLP in Washington, D.C., and Leah Lorber, formerly of counsel to the firm and currently Director of Public Policy - Tort Reform for GlaxoSmithKline

LEGAL BACKGROUNDER, January 14, 2005, 4 pages

West Virginia Supreme Court Sets High Bar For Plaintiffs In Medical Monitoring Cases

By Sean Wajert, a partner at Dechert LLP and the chair of its Mass Torts & Product Liability practice group

LEGAL OPINION LETTER, December 17, 2004, 2 pages

Michigan High Court Ruling Offers Positive Guidance On Challenges To Tort Reform Laws

By Glenn G. Lammi, Chief Counsel of the Washington Legal Foundation's Legal Studies Division and James Chang, an Institute for Humane Studies Fellow at the Washington Legal Foundation during the summer of 2004

LEGAL BACKGROUNDER, December 17, 2004, 4 pages

State Appeal Bond Reforms Protect Defendants' Due Process Rights

By Glenn G. Lammi, Chief Counsel of the Washington Legal Foundation's Legal Studies Division, and Justin P. Hauke, an Institute for Humane Studies Fellow at the Washington Legal Foundation during the summer of 2004

LEGAL BACKGROUNDER, November 12, 2004, 4 pages

Conversations With Civil Justice Reform

Features The Honorable Dick Thornburgh, Counsel to the law firm Kirkpatrick & Lockhart Nicholson Graham LLP leading a discussion with Bernard Marcus, Director Emeritus to and co-founder of The Home Depot, Inc., Maurice ("Hank") Greenberg, former Chairman and CEO of American International Group, and Steven Hantler, Assistant General Counsel for Government and Regulation, DaimlerChrysler Corporation

CONVERSATIONS WITH, Fall 2004, 8 pages

Florida High Court Should Reject "Regulation Through Litigation"

By Glenn G. Lammi, Chief Counsel of the Washington Legal Foundation's Legal Studies Division

LEGAL BACKGROUNDER, September 3, 2004, 4 pages

Stopping Frivolous Litigation And Protecting Small Businesses

By Congressman Lamar Smith, who has represented the residents of the 21st Congressional District of Texas since 1987

LEGAL OPINION LETTER, September 3, 2004, 2 pages

State High Court Strikes Latest Blow Against Tort Reform Nullification

By Thomas J. Foley, a Principal and Founder of the Detroit-area law firm of Foley, Baron & Metzger, PLLC where he heads the Products and Complex Liability Practice Group, and Jill I. Zyskowski, an associate with the firm

COUNSEL'S ADVISORY, August 6, 2004, 1 page

"Do-It Yourself" Tort Reform? C Focus On Medical Experts Could Ebb Tide Of Malpractice Lawsuits

By Dr. Jeffrey Segal, founder and CEO of Medical Justice Services, Inc. and a board certified neurosurgeon and fellow of the American College of Surgeons, and Michael Sacopulos, Counsel to Medical Justice Services, Inc. and a partner in Sacopulos, Johnson, and Sacopulos in Terre Haute, Indiana

LEGAL BACKGROUNDER, July 23, 2004, 4 pages

Mississippi Joins The Ranks Of Tort Reform Success Stories

By David W. Clark, a partner in the Jackson, Mississippi office of the law firm Bradley Arant Rose & White LLP

LEGAL OPINION LETTER, June 25, 2004, 2 pages

How We Lost Our Way. The Road To Civil Justice Reform

By James M. Wootton, a partner with the law firm Mayer, Brown, Rowe & Maw, LLP in its Washington, D.C. office. Foreword by Thomas A. Gottschalk, Executive Vice President & General Counsel of General Motors Corporation

WORKING PAPER, May 2004, 41 pages

Study On Class Actions Attorney Fees Fails To Undermine Case For Reform

By Victor E. Schwartz and Kimberly D. Sandner, attorneys with the law firm Shook, Hardy & Bacon LLP in Washington, D.C., and Sherman Joyce, President of the American Tort Reform Association

LEGAL BACKGROUNDER, April 16, 2004, 4 pages

A Progress Report On Rule 23(f) Five Years Of Immediate Class Certification Appeals

By Brian Anderson, a partner in the Washington, D.C. office of O'Melveny & Myers LLP specializing in class actions and other complex litigation, and Patrick McLain, a former law clerk with the firm

LEGAL BACKGROUNDER, March 19, 2004, 4 pages

The Seven Myths Of Highly Effective Plaintiffs Lawyers

By Steven B. Hantler, Assistant General Counsel, DaimlerChrysler Corporation

LEGAL BACKGROUNDER, January 16, 2004, 4 pages

Targeted Policies Can End Forum Shopping

By John Beisner, an attorney with the Washington, D.C. office of the law firm of O'Melveny & Myers LLP and Jessica Davidson Miller, also an attorney with the firm

LEGAL BACKGROUNDER, September 5, 2003, 4 pages

Clearing Uninjured Plaintiffs From The Tort System: The Road To A Solution

By Frederick C. Dunbar and Denise Neumann Martin, Senior Vice Presidents at National Economic Research Associates, Inc.

LEGAL BACKGROUNDER, July 25, 2003, 4 pages

States Disserve The Public Interest When Hiring Contingent Fee Lawyers

By Don Stenberg, Nebraska's Attorney General from 1991 to 2002

LEGAL BACKGROUNDER, June 20, 2003, 4 pages

Michigan High Court Upholds Drug Product Liability Reform
By Thomas J. Foley, a Principal and Founder of the Detroit-area law firm of Foley, Baron & Metzger, PLLC where he heads the Products and Complex Liability Practice Group
COUNSEL'S ADVISORY, April 25, 2003, 1 page

Shocking State Jury Award Highlights Deep Flaws In Civil Justice System
By James C. Martin and Lisa M. Baird, partners with the law firm Reed Smith LLP
LEGAL OPINION LETTER, April 25, 2003, 2 pages

Suits Against "Big Fat" Tread On Basic Tort Liability Principles
By Michael I. Krauss, a professor of law at George Mason University
LEGAL BACKGROUNDER, March 14, 2003, 4 pages

Pharmacist's Crime Shouldn't Expose Businesses To Liability
By Thomas P. Redick, a partner in the St. Louis law firm Gallop, Johnson & Neuman, L.C.
LEGAL OPINION LETTER, January 31, 2003, 2 pages

Vaccine Liability Law Clarification Protects Lives And Resources
By Victor E. Schwartz, chairman of the Public Policy Group at the law firm Shook, Hardy & Bacon LLP, and Leah Lorber, formerly of counsel in the Public Policy Group in the Washington, D.C. office of Shook, Hardy & Bacon LLP and currently Director of Public Policy - Tort Reform for GlaxoSmithKline
LEGAL BACKGROUNDER, January 10, 2003, 4 pages

Key Safeguard Against Meritless Suits Under Attack In California
By Michael K. Brown and Lisa M. Baird, attorneys with the Los Angeles office of the law firm Reed Smith LLP
LEGAL BACKGROUNDER, August 24, 2001, 4 pages

Courts Properly Dismiss Meritless Ritalin Litigation
By James M. Beck, an attorney with the Philadelphia law firm Dechert LLP
LEGAL BACKGROUNDER, June 29, 2001, 4 pages

Government "Regulation By Litigation" Must Be Terminated
By The Honorable Bill Pryor, former Attorney General of the State of Alabama, who serves on the U.S. Court of Appeals for the Eleventh Circuit
LEGAL BACKGROUNDER, May 18, 2001, 4 pages

Changes Proposed In European Product Liability Law
By Victor E. Schwartz, a partner in the law firm of Shook, Hardy & Bacon in Washington, D.C., and Leah Lorber, formerly Of Counsel to the firm and currently Director of Public Policy - Tort Reform for GlaxoSmithKline
LEGAL BACKGROUNDER, March 9, 2001, 4 pages

Cell Phone Suits Have No Basis In Science Or Law
By Craig T. Liljestrand, a partner with the Chicago law firm Hinshaw & Culbertson
LEGAL BACKGROUNDER, December 15, 2000, 4 pages

Efficient Tort Reform Can Reduce Redistributive Litigation
By David N. Laband, Professor of Forest Economics at Auburn University
LEGAL BACKGROUNDER, April 28, 2000, 4 pages

Trial Lawyers Advance Judicial Assault On Tort Reform
By Kurt Tunnell and Anne Marie Sferra, partners with the Columbus, Ohio law firm Buckle & Eckler LLP
LEGAL BACKGROUNDER, March 3, 2000, 4 pages

State Courts Follow Perilous Path When Reviewing State Tort Reform
By Leah Marie Garcia, formerly a student in the Washington Legal Foundation's Economic Freedom Clinic at George Mason University School of Law
LEGAL BACKGROUNDER, February 4, 2000, 4 pages

Trade Associations In The Tort Spotlight Legal Rights And Defenses
By Theodore Voorhees, Jr., a partner with the Washington, D.C. law firm Covington & Burling
WORKING PAPER, February 2000, 26 pages

■ TOXIC TORTS

Victory In Tuna Trial Significant For All Proposition 65 Defendants
By Ann G. Grimaldi, a partner at McKenna Long & Aldridge LLP in its San Francisco office
LEGAL BACKGROUNDER, August 4, 2006, 4 pages

State Based Reforms: Making A Difference In Asbestos And Silica Cases
By Mark A. Behrens and Frank Cruz-Alvarez, a partner and an associate, respectively, from the law firm Shook, Hardy & Bacon LLP
LEGAL OPINION LETTER, August 4, 2006, 2 pages

Ruling Criticizing Prop 65 Is Mixed Blessing For Defendants
By Lisa L. Halko, an associate with the law firm Greenberg Traugott, LLP in its Sacramento office
LEGAL BACKGROUNDER, July 7, 2006, 4 pages

Billed Asbestos Plaintiffs Sue Florida Bar Association
By John Stadler, Counsel in the Boston office of the Law Firm Nixon Peabody LLP
COUNSEL'S ADVISORY, May 19, 2006, 1 page

An Exaggerated And Ill-Conceived Sense Of Risk The Ephemeral Nature Of California's Proposition 65
By Thomas H. Clarke, Jr., a senior partner with Ropers, Majeski, Kohn, & Bentley in their San Francisco office
WORKING PAPER, April 2006, 26 pages

USG Settlement Reflects Sorry State Of Asbestos Bankruptcies
By Mark D. Taylor, a partner in the Financial Restructuring and Bankruptcy practice of Arent Fox PLLC where he represents debtors, Chapter 11 Trustees, and committees in asbestos related or other mass tort bankruptcies, and Brandi A. Richardson, an associate in the General Litigation and Government Relations practices of Arent Fox PLLC
LEGAL BACKGROUNDER, April 21, 2006, 4 pages

High Courts Reject Premises Liability For Secondhand Asbestos Exposure

By Mark A Behrens, and Andrew W Crouse, attorneys in the Public Policy Group of the law firm Shook, Hardy & Bacon LLP's Washington, D C office

LEGAL OPINION LETTER, December 16, 2005, 2 pages

State Law As Health Hazard. How Prop 65 Undermines National Food Labeling

By Gene Livingston, a Shareholder with the law firm Greenberg Traurig, LLP in its Sacramento office, and Lisa L. Halko, an associate with the firm, also in its Sacramento office

LEGAL BACKGROUNDER, December 16, 2005, 4 pages

Silica Litigation: Screening, Scheming & Suing

By Nathan A Schachtman, a partner at McCarter & English LLP in the firm's Philadelphia office whose practice focuses on the defense of products liability suits involving claims of defective drugs and medical devices and toxic exposures

WORKING PAPER, December 2005, 18 pages

Would You Like A Prop 65 Warning With Those Fries?

By Ann Grimaldi, a partner with the law firm McKenna Long & Aldridge LLP

LEGAL BACKGROUNDER, November 18, 2005, 4 pages

Asbestos Bankruptcy Debtors Question Validity Of Claims

By Glenn G Lammi, Chief Counsel of the Washington Legal Foundation's Legal Studies Division

COUNSEL'S ADVISORY, September 23, 2005, 1 page

The Jungle vs Prop 65 Federal Law Preempts California Health Warnings

By Gene Livingston and Lisa L. Halko, attorneys in the Sacramento office of the law firm Greenberg Traurig LLP

LEGAL BACKGROUNDER, September 9, 2005, 4 pages

Judge's Silica Opinion Exposes Manufactured Tort Claims To Antiseptic Sunshine

By John S. Stadler, Counsel in the Boston office of the law firm Nixon Peabody LLP

LEGAL BACKGROUNDER, August 12, 2005, 4 pages

Court Issues Key Ruling on Estimating Liability In Asbestos Bankruptcies

By Mark D Plevin, a partner and Leslie A Epley, an associate at the law firm of Crowell & Moring LLP in Washington, D C

They frequently represent insurers in asbestos bankruptcies

LEGAL BACKGROUNDER, July 29, 2005, 4 pages

State-Based Medical Criteria For Asbestos Suits Gains Momentum

By Mark A Behrens and Phil Goldberg, attorneys in the Public Policy Group of the law firm Shook, Hardy & Bacon LLP in Washington, D C

LEGAL OPINION LETTER, July 1, 2005, 2 pages

Grand Jury Probe Raises Stakes In Asbestos And Silica Testimony

By David Price, former Senior Vice President for Legal Affairs of the Washington Legal Foundation

COUNSEL'S ADVISORY, June 10, 2005, 1 page

Solving The Great Asbestos Bankruptcy Heist

By Mark D. Taylor, a partner in the Financial Restructuring and Bankruptcy practice of Arent Fox PLLC where he represents debtors, Chapter 11 trustees, and committees in asbestos-related or other mass tort bankruptcies

LEGAL BACKGROUNDER, April 8, 2005, 4 pages

FTC Needs Evidence Of Improper Recruitment In Asbestos Cases

By David Price, former Senior Vice President for Legal Affairs of the Washington Legal Foundation

COUNSEL'S ADVISORY, January 14, 2005, 1 page

New Ohio Asbestos Reform Law Protects Victims and State Economy

By Kurtus A Tunnell, a partner with the law firm of Bricker & Eckler LLP and the Chair of the firm's Government Relations Practice Group, Anne Marie Sferra Vorys, also a partner with the firm, and Miranda C Motter, an associate with the firm practicing in government relations

LEGAL BACKGROUNDER, August 6, 2004, 4 pages

Petitions Seek Investigations Of Asbestos Plaintiff Recruitment

By David Price, former Senior Vice President for Legal Affairs of the Washington Legal Foundation

COUNSEL'S ADVISORY, April 2, 2004, 1 page

Court Rules California's Prop 65 Supersedes Federal Drug Rules

By Gene Livingston, a shareholder at the Sacramento office of the law firm Greenberg Traurig LLP

LEGAL OPINION LETTER, November 1, 2002, 2 pages

Federalism And Congressional Reform of National Class Actions

By The Honorable William H Pryor, Jr., former Attorney General of the State of Alabama, who serves on the U S Court of Appeals for the Eleventh Circuit

WORKING PAPER, September 2002, 22 pages

California Court Should Bar Prop 65 Anti-Chocolate Suit

By Jeffrey B Margulies, a shareholder in the Los Angeles office of the law firm Fullbright & Jaworski

LEGAL OPINION LETTER, July 26, 2002, 2 pages

Court Upholds State Law Limiting Asbestos Liability

By Joanne Greenhaus Noble and Samuel W. Silver, attorneys with the law firm Schnader Harrison Segal & Lewis LLP, resident in its Philadelphia office

LEGAL OPINION LETTER, July 12, 2002, 2 pages

Court Ruling Reveals Absurdity Of California's Proposition 65

By Jeffrey B Margulies, a shareholder in the Los Angeles office of the law firm Fullbright & Jaworski

LEGAL BACKGROUNDER, February 8, 2002, 4 pages

Federal Appeals Court Urges Congressional Action On Asbestos Liability Crisis

By Mark D Plevin and Leslie A Epley, attorneys with the Washington, D C law firm of Crowell & Moring LLP

LEGAL BACKGROUNDER, December 20, 2002, 4 pages

New York Court Ruling Impacts "Peripheral" Asbestos Defendants
 By John S. Stadler, Counsel to the Boston law firm Nixon Peabody LLP

COUNSEL'S ADVISORY, December 20, 2002, 1 page

New Law Brings Fairness To Pennsylvania Civil Justice System
 By Ted Haussman, Jr., an attorney with the Philadelphia law firm Schnader Harrison Segal & Lewis and Scott M. Brevic, an attorney with the Philadelphia law firm Drinker Biddle & Reath LLP

COUNSEL'S ADVISORY, December 6, 2002, 1 page

Unpublished State Toxic Tort Ruling Offers Valuable Guidance
 By Ellis J. Horvitz, the founder of and senior partner with the Encino, California law firm of Horvitz & Levy LLP, and Stephanie Rae Williams, an associate at Horvitz & Levy LLP

LEGAL BACKGROUNDER, October 6, 2000, 4 pages

California Requests Comments On Proposed "Prop 65" Regulations
 By Barry P. Goode, former Legal Affairs Secretary to California Governor Gray Davis, and partner with the San Francisco law firm Bingham McCutchen, Trenton H. Norrns and Ladd Cahoon, attorneys with the firm

COUNSEL'S ADVISORY, June 23, 2000, 1 page

Causation And Scientific Evidence In Toxic Tort Suits. Case Studies And Analysis

By David J. Rosso, a partner in the Chicago office of the international law firm of Jones Day

WORKING PAPER, December 1999, 40 pages

■ WORKPLACE SAFETY & HEALTH REGULATION

U.S. Senate Considers Reforms To OSHA Law

By Christopher J. Armstrong, an attorney with the U.S. Office of Special Counsel

LEGAL OPINION LETTER, May 5, 2006, 2 pages

Passage Of House Bill Advances Important OSHA Reforms

By Arthur G. Sapper, partner in the OSHA Practice Group of McDermott, Will & Emery LLP. He is a former adjunct professor of OSHA law, and the former Deputy General Counsel of the Occupational Safety and Health Review Commission

LEGAL BACKGROUNDER, October 1, 2004, 4 pages

Appeals Court Sets OSHA Straight On Willful Violations Of Law

By Arthur G. Sapper, a partner with the OSHA Practice Group at McDermott, Will & Emery LLP. He is also the former Deputy General Counsel of the Occupational Safety and Health Review Commission, and a former adjunct professor of OSHA law at Georgetown University Law Center

LEGAL OPINION LETTER, January 30, 2004, 2 pages

Managing Ergonomic Concerns Under OSHA's New Guidelines

By Jerome K. Bowman, Assistant General Counsel to the American Dental Association in Chicago

LEGAL BACKGROUNDER, May 24, 2002, 4 pages

California High Court Muddles Standard For Workplace Tort Suits

By Lynn A. Bersch, a partner with the law firm Reed Smith LLP in San Francisco

LEGAL BACKGROUNDER, April 26, 2002, 4 pages

OSHA Should Be Consultant, Not Regulator, On Ergonomics

By Thomas J. Slavin, Manager, Safety and Health, for International Truck and Engine Corporation, and William B. Bunn III, Vice President, Health, Safety and Productivity, and Medical Director of International Truck and Engine Corporation

LEGAL BACKGROUNDER, August 10, 2001, 4 pages

Assessing OSHA's New Ergonomics Standard

By Jerome K. Bowman, Assistant General Counsel to the American Dental Association in Chicago

WORKING PAPER, December 2000, 38 pages

California Court Expands Employers' Liability Under State OSHA Law

By Jeffrey M. Tanenbaum, senior shareholder and co-chair of the occupational safety and health practice group with the San Francisco law office of Littler Mendelson, a Professional Corporation

LEGAL BACKGROUNDER, September 22, 2000, 4 pages

OSHA's Ergonomics Standard Is Flawed Beyond Repair

By Willis J. Goldsmith, a partner, and Jacqueline M. Holmes, an associate, both in the Washington, D.C. office of the law firm Jones Day

LEGAL BACKGROUNDER, June 23, 2000, 4 pages

Vigorous Debate Expected Over Washington Ergonomics Proposal

By Bruce Michael Cross, a partner with the Seattle law firm Perkins Coie LLP

LEGAL BACKGROUNDER, March 31, 2000, 4 pages

■ ALTERNATIVE DISPUTE RESOLUTION (ADR)

Employment Dispute Arbitration: An Antidote To Frivolous Litigation

By Paul W. Cane, Jr.

Mandatory, Non-Binding ADR. An Equitable Approach To Settling Employment Disputes

By Nancy A. Shaw

Delaware's New Summary Procedure For Business Disputes Could Reduce Legal Costs

By Jay W. Eisenhofer

Pre-suit Mediation In Texas A Prototype For National Implementation

By Kevin Dunne

Breaking The Litigation Mindset Through Mediation: A Florida Success Story

By Joseph R. Creighton

California's Innovative Dispute Settlement Plan Is A Model For American Legal Reform

By The Honorable Daniel E. Lungren

■ ANTITRUST & CONSUMER PROTECTION REGULATION

FTC Quietly Advances Regulatory Agenda In Alcohol Advertising Report

By Glenn G. Lamm

High Court Ruling Fails To Provide New Structure To Antitrust Review

By Donald Falk

States' Antitrust Enforcement Escalates With Federal Activism

By Jay N. Fastow

FTC's Quest For Money Damages An Unauthorized Power Grab

By Michael S. Kelly

Market Concentration As An Antitrust Standard. Does It Make Sense?

By Stanley M. Gornson

Anticipating Collateral Legal Risks Arising From FTC Enforcement Actions

By Irving Scher

California's "Little FTC Act" Benefitting Consumers, Or Lawyers?

By David M. Axelrad, Lisa Perrochet, and Wendy S. Albers

State High Court Can Rein In California's "Little FTC Act"

By William L. Stern

Comment On Extension Of FTC Rules To Electronic Commerce

By R. Paul Margie, Jr.

Surviving Antitrust Agencies' Scrutiny During "Merger Mania"

By Kevin J. Arquit

New Law Expands Paperwork Burden And Liability Threat For Employers

By Mark R. Hornak

Does Office "Superstore" Merger Rejection Begin "A New Wave Of FTC Activism"?

By Greg Kinzelman

California High Court Ruling Complicates Antitrust Compliance

By Jesse W. Markham, Jr.

The FTC's Global Competition Report: Will It Alter Scrutiny Of Mergers?

By Joseph Kattan

When Intellectual Property And Antitrust Law Collide: FTC Must Tread Lightly

By Robert A. Skitol

Will New Guidelines Clarify Role Of Antitrust Law In Health Care?

By Bruce R. Stewart

Going For The Green Activists Target Environmental Ad Claims

By Jeffrey S. Edelstein

Comment On FTC Green Advertising Guidelines

By Elhanan C. Stone

Guidelines To Keep Advertisers Out Of Court

By Lawrence Savell

Federal Court Blocks Consumer Activists' Attempts To Bring False Advertising Suits

By Robert D. Paul

Settling With The FTC: Caveat Emptor

By Deborah Owen

Proposed Changes To Uniform Commercial Code Threaten To Chill Advertisers

By Douglas J. Wood

Protecting Competitors Instead Of Competition Harms Consumer Welfare

By Alan M. Slobodin

First Amendment Questions Raised By FTC — Enforcement Against "Invitations To Collude"

By Larry E. Ribstein

Is The FTC Taking A More Activist Role In Regulating Commercial Speech? Read The Fine Print In Consent Orders

By David A. Clanton

Mergers In The Defense Industries No Change In The Rules Of The Antitrust Game

By Charles A. James

■ BANKING LAW & REGULATION

The Y2K "Millennium Bug" And Banks Compliance And Disclosure Case Study

By Robert A. Schwartz

Court Limits Activists' Ability To Block Bank Mergers

By Warren W. Traiger and Joseph Calluori

Comment On New Federal Reserve Bank Acquisition Proposal

By Peter J. Wallison

Do Community Lending Advocates Wield Too Much Influence Over Bank Regulation?

By Albert V. De Leon

Settlements Display DOJ Activism On Fair Lending Enforcement

By Warren L. Dennis

Federal Court Decision Wrongly Increases Bank Directors' Liability

By Warren L. Dennis

Government's New Activism In Equal Credit Enforcement Threatens Consumer Lending

By Warren L. Dennis

Fair Lending Enforcement: How The Government Micromanages Banking

By David J. McPherson

Federal Courts' Message To Government End Judicial Inquisition Against Honest Bank Directors And Officers

By Warren L. Dennis

The Anatomy Of An S&L Lawsuit FDIC's Strategy Of Squeezing Settlements From Deep Pockets Regardless Of Evidence Of Wrongdoing

By J. Jonathan Schraub and Danny M. Howell

■ BIOTECHNOLOGY REGULATION

Anti-Biotech Activists' Lawsuit Threatens New Food Technologies

By Kenneth Weinstein

Can FDA Live In The Future?: Their Problem With Biotech Foods

By Dr. Henry I. Miller

The Genius Of American Biotechnology Must Be Protected From Misguided Restrictions

By David Beier

Getting U.S. Biotechnology Out Of The Legal Quagmire

By Robert P. Parker

■ CHARITABLE ORGANIZATIONS

Implement Self-Destruct Mechanism To Preserve Foundation Mission

By Bertrand M. Harding

The IRS Exempt Organization Audit: How Proper Planning Can Help Private Foundations Survive

By Bertrand M. Harding, Jr.

Preventing Subversion Of The Private Foundation's Mission

By Bertrand M. Harding, Jr.

Using Charitable Dollars To Affect Public Policy

By Bruce R. Hopkins and Elyse I. Summers

■ CIVIL LIBERTIES OF BUSINESS

Attorney-Client Privilege And "Crime-Fraud" Exception.

The Erosion Of Business Privacy

By The Honorable Richard Thornburgh Foreword by Stephen L. Hammerman Introduction by Lawrence A. Salibra, II

Nondelegation Doctrine's Revival Could Limit

Regulatory Activism

By Daniel E. Troy

Officers And Directors. Liability Exposure Under Civil And Criminal Law

By Matthew J. Iverson, and Stephen M. Kowal Foreword by Clayton K. Yeutter Introduction by Rick Harrington

Court Ruling On Auto Recall Confirms Due Process Protections

By Gregory G. Garre

Choosing A Corporate Compliance Officer

By Jay N. Fastow

Court's Denial Of Privilege Undermines Corporate Compliance

By Joseph E. Murphy

EPA Pesticide Rule Threatens Business Civil Liberties

By Douglas T. Nelson

Plaintiffs Seek To Pierce The Attorney-Client Privilege

By Benjamin B. Klubes

Rational Changes Can Improve The Postal Rate-making Process

By Honorable Wayne A. Schley

Environmental Enforcement Proposal Threatens Business Civil Liberties

By Daniel M. Steinway and Thomas C. Jackson

Challenging Administrative Agency Interpretations Of Statutes Or Regulations

By Charles M. Chadd, and Jerome K. Bowman Foreword by William B. Lytton Introduction by Andrew H. Card, Jr.

Strict Intent Standard In Environmental Cases Protects Civil Liberties

By Thomas R. Bartman and Kevin A. Gaynor

New Law Will Force Honest Regulatory Accounting

By U.S. Senator Ted Stevens and Paul Noe

HUD Rule Reduces Respondents' Rights During Fair Housing Investigations

By Nancy L. Perkins

California High Court Must Uphold Business Owners' Ability To Fight Crime

By Robert L. Kaufman

Stricter Judicial Oversight Needed To Check Postal Service Powers

By Jon D. Fox and David A. Clanton

Administrative Due Process Essential For Real Regulatory Relief

By Bob Barr

Court Rules On Due Process Rights In Health Care Fraud Prosecutions

By Stephen L. Teichler

Using Compliance Programs And Internal Investigations To Protect Confidential Information

By Jay B. Stephens and David M. Haug

Strategic Responses To Government's Use Of Search Warrants

By Jay B. Stephens and James A. Meade

Environmental Warrantless Searches. Closely Watched Trains?

By James N. Christman and Dan J. Jordanger

Courts Must Refrain From Chilling Corporate Speech Rights

By Leslie Gordon Fagen

Regulatory Inspection Procedure Guidelines

By W. Hugh O'Riordan

Careful Planning Required To Protect Privacy Rights During Environmental Compliance

By Renée R. McDermott and Mark E. Shere

When Do Warrantless Environmental Searches Violate Business' Civil Liberties?

By Harry E. Grant, Jr. and Craighton E. Goeppel

Will Your Company's Compliance Program Be Your Undoing?

By Joseph E. Murphy

Protecting A Corporation's Free Speech Rights During Trial: A Case Study

By Martin H. Redish and Stuart E. Rickerson

Inspector General Subpoena Powers. A New Civil Liberties Threat To Business?

By Kathleen Buck

■ CIVIL RIGHTS

Look Who's Breaking The Law Pittsburgh Police Hiring Procedures Are Illegal

By Richard A. Samp

The Civil Rights Act Of 1991 A Harbinger Of More Litigation

By Glen D. Nager and David A. Copus

Burke, Affirmative Action, And Yale Pale Males

By Stephen B. Presser

■ COMMERCIAL SPEECH

Constitutional Implications Of Display Advertising Restrictions

By John F. Fithian

FDA And DTC Advertising. Changes, Challenges & Constitutional Scrutiny

By Sandra J. P. Dennis

Court Again Nullifies FDA Policies Restricting Health Care Information

By George M. Burditt

Free Flow Of Commercial Speech Essential To World Market

By Richard M. Corner

FTC Treads On Free Speech Rights With Corrective Advertising Order

By Barry J. Cutler

Supreme Court Should Strengthen Commercial Free Speech Rights

By John J. Walsh and Steven G. Brody

FTC's Expansion Of "Unfairness" Jurisdiction Imperils Speech Rights

By D. John Hendrickson

Court Suppresses FDA Censorship Of Health Product Information

By George M. Burditt

Commercial Speech Restrictions Failing Federal Court Tests

By Glenn G. Lamm

Marketing Restrictions In Tobacco Legislation Are Unconstitutional

By Solange E. Bitol

European Union Should Resist French-Style Alcohol Ad Restrictions

By Marc E. Sorin

Tobacco Settlement Speech Limits Unconstitutional If Imposed By Law

By Burt Neuborne

FCC Lacks Authority Over Alcohol Advertising

By Glenn G. Lamm

Federal Agencies' Attacks On Ads Offend Commercial Speech Rights

By Robert A. Levy

The Supreme Court's Puzzling Silence On Billboard Advertising Ban

By Felix H. Kent

Actions Against Alcohol Ads Blow Chilling Winds On Commercial Speech

By William C. MacLeod

FTC Should Continue Careful Approach On "Unfair" Alcohol Advertising Charges

By Deborah Owen

A Constitutional Analysis Of FDA's Restrictions On Advertising

By Jerome L. Wilson

Attempts To Restrict Alcohol Ads Face Serious Constitutional Hurdles

By Nell Kilburn Shapiro

Federal Court Must Strike Down FDA Censorship Of Advertising

By David S. Versfelt

Supreme Court's Decision Requires FDA To Reconsider Free Speech Issues

By Daniel A. Kracov and David J. Bloch

Supreme Court Should Strike Down Compelled Commercial Speech

By Richard A. Samp

Supreme Court Should Review Flawed Commercial Speech Decisions

By Jeffrey R. Chazin, Ragesh K. Tangri and Daralyn J. Durie

Activist FDA Threatens Constitutional Speech Rights

By The Honorable Robert H. Bork

Canadian Commercial Speech Decision Sends Message To U.S. Policymakers

By Glenn G. Lamm

Courts Must Delicately Balance Privacy And Commercial Free Speech Rights

By Robert C. Cumbow

Rubin v. Coors. Supreme Court Rejects Prohibitionism

By Burt Neuborne

Federal Court Decision A Roadblock To Advertising On Information Highway?

By Daniel Brenner

Advertising Bans Vulnerable To Constitutional And Statutory Challenges

By Ralph D. Davis

Appeals Court Should Protect Commercial Speech In Green Advertising Case

By John J. Walsh

FTC's New Authority Over "Unfair" Advertising Is A Mixed Blessing For Commercial Speech

By Richard E. Wiley and Hugh Latimer

Supreme Court Should Strike Down New-Prohibitionist Restrictions On Commercial Speech In *Coors* Case

By John F. Kamp and Jay Fisher

New Prohibition Attacks On Alcohol Demon Rum And Ineffective Paternalism Revisited

By Richard Mendelson

Ibanez v. Florida Dept. Of Business And Professional Regulation. The Supreme Court Strengthens Commercial Speech Protection

By Peter Nichols

City Ordinances Banning Tobacco And Alcohol Advertising Are Unconstitutional

By Daniel E. Troy

Can Government, Private Interests Preserve Advertising As A Tool Of Competition In The Global Marketplace?

By Barry J. Cutler

Customs Rule On Country Of Origin Marks On Front Panels Of Frozen Produce Packages Lacks Legal Basis

By Richard L. Frank, John W. Bode, and Michael J. O'Flaherty

The New Prohibition Has No Place In FTC Food Advertising Policy

By Susan E. Chamberlin

New Prohibitionism On Trial: Judicial Approval Of Baltimore's Ad Ban Should Be Reversed

By Ralph D. Davis

New Prohibitionism And The First Amendment

By Robert S. Peck

Speakeasies In A New Age Of Prohibition

By Sandy Shaw and Durk Pearson

A Structural Approach To Increasing Commercial Speech Protection

By Robert A. Destro

1993 Supreme Court Decisions Signal Opportunities To Challenge Commercial Speech Restrictions

By Raymond L. Friedlob and George D. Kreye

Supreme Court Decisions Reaffirm Need To Provide Commercial Speech Full Constitutional Protection

By Bernard H. Siegan

Recent Commercial Speech Decision Casts Doubt On Bans Of Advertising Names Or Images

By Alan M. Slobodin

Proposed Alcohol Ad Warnings Are Contrary To Free Speech Values And Consumer Interests

By John E. Calfee

California Proposal To Ban Cartoon Advertising For "Inherently Unsafe" Products Is Unconstitutional

By Daniel E. Troy

Proposal To Eliminate Tax Deduction For Advertising Expenses Is Unconstitutional

By Robert S. Peck

Anti-Industry Propaganda Is Constitutionally Suspect

By Alan M. Slobodin

Will FTC Win Battle Against Kraft But Lose War In Its Effort To Limit Commercial Speech?

By Hugh Latimer

Constitutionally Suspect Ad Ban Enacted In Seattle

By P. Cameron DeVore

Product Placement In Movies Cannot Be Regulated As Commercial Speech Under The First Amendment

By Jeffrey R. Chazin and James E. Boasberg

Open Season On Commercial Speech

By Stephen R. Bergerson

Proposal Forcing Preclearance Of Drug Advertising Would Violate First Amendment

By Alan R. Bennett

Pepsico And Other Corporate Boycotts, 1990s Style. First Amendment Issues And Response

By Elliot M. Minberg

BATF Censorship Is Hazardous To Health Of Alcohol Market And Free Speech

By John E. Calfee

BATF Restriction On Truthful Health Claims In Wine Advertising Violates First Amendment

By John A. Hinman

Project "ASSIST" Federal Funds For Speech And Behavior Control

By Jonathan W. Emord

California Proposal To Ban Cartoon Figures In Advertising Violates First Amendment

By Daniel E. Troy

Supreme Court Should Affirm Strong Protection For Commercial Speech

By Robert S. Peck

California's Environmental Advertising Law — An Unconstitutional Restraint On Free Speech?

By Rex S. Heinke and Kelli L. Sager

New York City's Attempt To Limit Tobacco Ads Is Constitutionally Suspect

By Daniel E. Troy

Advisory Council's Ad Ban Recommendation Has No Place In Health Care Debate

By Alan M. Slobodin

Congressional Confusion On Labeling And Advertising Could Deny Consumer Information And Free Speech

By Timothy J. Muris and J. Howard Beales

Overturing Of Canada's Advertising Ban Is A Lesson For America's Judges

By Alan M. Slobodin

A Case Of Official Political Correctness Anti-Industry Propaganda

By Daniel D. Polsby

Making The World Safe From Kiddle-Food Is AAP's Food Advertising Ban Idea Constitutional?

By Alan M. Slobodin

States' Proposed Recycling Regulations Are Constitutionally Suspect

By Richard A. Samp

Canadian Advertising Case Could Bolster Constitutional Arguments Against Restrictions On Commercial Speech In U.S.

By Alan M. Slobodin

■ COMMUNICATIONS AND INFORMATION TECHNOLOGY LAW

Court Introduces Speech Rights Into The Encryption Debate

By Rick White and Peter Schalestock

Proposed Act Sets Uniform Rules For Computer Information Transactions

By George L. Graff

Congress Modifies Copyright Protections For The Digital Age

By David M. Young

Federal Government Poised To Create More "Year 2000" Legal Threats

By former U.S. Senator George Allen and Scott C. Oostdyk

Legal Jurisdiction In Cyberspace: Locating The Seams On The Web

By David J. Goldstone

Should The FTC Regulate Privacy On The Internet?

By Lewis Rose

Comment On Government Plan To Secure The Information Superhighway

By Glenn B. Manishin

■ CONGRESS

Influential Federal Court Issues Landmark Federalism Decision

By Thomas H. Odom

Retroactive Economic Legislation Held Unconstitutional

By Daniel E. Troy

Constitution Confers Congress Broad Powers Over Welfare Benefits

By Mark W. Smith

The Congressional Subpoena Power

By Douglas R. Cox

Administration's Budget Tactics: An Illegal Use Of Executive Power?

By Congressman Nick Smith

"Three-Fifths" House Of Representatives Rule On Tax Votes Is Constitutional

By Amy Folsom Kett

The Legislative Politicization Of The U.S. Department Of Justice

By Stuart Gerson

Only A Constitutional Amendment Can Stop Congressional Hypocrisy

By Daniel J. Popeo

Congress Should Stop Frustrating Voter Initiatives To Limit Congressional Terms

By Congressman Christopher Cox

■ CORPORATE CRIMINAL LIABILITY

Supreme Court Asked To Review Key "Environmental Crimes" Case

By Bradley J. Daves

Court Reduces Government's Burden In Proving "Environmental Crimes"

By Robert E. Sims and Joshua A. Bloom

Creeping Criminalization And Its Social Costs

By Ronald L. Gainer

Environmental Violations Disclosure May Forestall Criminal Prosecution

By William D. Wick

Will Supreme Court Decision Increase Parallel Prosecutions?
By Ira H. Raphaelson and James G. Richmond

Corporate Criminal Liability: A Handbook For Protection
Against Statutory Violations
By George J. Terwilliger, III. Foreword by The Honorable
William P. Barr. Introduction by Honorable William W.
Wilkins, Jr. Preface by Norman L. Roberts

Corporate Compliance Programs: Maintaining The Commitment
By Jeffrey M. Kaplan and Rebecca S. Walker

"Honest Services" Fraud: Expanding The Criminalization
Of Corporate Conduct
By Stephen W. Grafman

Designing A Plan For Crisis Management And Avoidance
By The Honorable Stanley Sporkin

Corporate Investigations: A Practical Primer
By George J. Moscarino and Charles M. Kennedy. Foreword by
Michael P. Millikin. Introduction by Frank H. Menaker, Jr.

Abuse Of Environmental Prosecutions Undermines Trust
In Government
By Keith A. Onsdorff

Outside Interests Pressure Prosecutors To Criminalize
Free Enterprise
By Ira H. Raphaelson

After The Whistle Is Blown: Is The Best Defense
A Strong Offense?
By Anton R. Valukas, Robert R. Stauffer, and Douglas J. Brocke

High Criminal Intent Standard Needed For Complex
Environmental Laws
By Thomas R. Bartman

New Regulation Explains Contacts Allowed Between
Government And Enforcement Targets
By Darryl W. Jackson

Environmental Harm Under International Law:
A Crime Against Humanity?
By Albert Gidari

Supreme Court Should Review Environmental Crimes Case
By Jerome C. Roth

What You Don't Know Can't Hurt You: Changing Definitions
Of Willfulness In Federal Criminal Law
By The Honorable Michael Chertoff and Felice Berkman

Promoting Corporate Integrity: Lessons From A Recent Health
Care Fraud Investigation And Settlement
By Daniel Marino

Beware Environmental Defendants: Failure To Understand Title
18 Can Get You 20
By Barry M. Hartman and Stephen W. Grafman

Mandatory And Discretionary Debarment For
Environmental Crimes
By George J. Terwilliger, III and Jed L. Babbitt

Ninth Circuit Decision Expanding Environmental Criminal
Liability Should Be Overturned
By R. Christopher Locke and David P. Bancroft

EPA Should Reward Corporate Compliance Without Damaging
Civil Liberties And Cooperation
By Lynn L. Bergeson

Corporate Vicarious Criminal Liability
By William C. Hendricks, III and J. Sedwick Sollers, III

A Meaner Environment: Prosecutors Increase Use Of Strict
Liability Doctrine To Target More Corporate Executives
By Robert L. Hines

The Weinberger Prosecution: Whatever Happened To The Rule
Of Law?
By Michael W. McConnell

California Corporate Criminal Liability Act May Be Preempted
By Federal OSHA
By David H. Canter and Melissa A. Immel

Criminalizing Environmental Law: Can America Afford Jailing
Honest Businessmen?
By Keith A. Onsdorff and James M. Mesnard

Fairness In White Collar Crime Cases: Prosecutors Should
Faithfully Follow The Principles Of Federal Prosecution
By The Honorable Larry D. Thompson

U.S. Court Of Appeals Can Put A Stop To Criminalization
Of Honest Business Activities
By Richard A. Samp

Environmental Violations: What You Should Know About
Avoiding Criminal Sanctions
By Carol E. Dimkins

The Second Circuit's White-Collar Reversals: Good News
For Business
By Robert J. Giuffra, Jr.

How To Comply Responsibly With The California Corporate
Criminal Liability Act
By Lawrence R. Herman

California's Corporate Criminal Liability Act Of 1989:
Regulating Business Through Criminal Sanctions
By Brian J. Hennigan and Jack P. Lipton

Developing A Corporate Compliance Program
By Alan R. Yuspeh

Surviving Congress And The Imperial Prosecutor: What
Corporations Can Learn From The Ollie North Case
By Robert F. Hanley

■ CRIME AND PUNISHMENT

Judicial Oversight Of New York City Prisons Nears
A Welcome End
By Lorna Bade Goodman

Delinquent Justice: One State's Struggles With Endless Death
Penalty Appeals
By The Honorable Bill Pryor

Federal Court Incorrectly Awards Illegal Immigrants New Rights
By Barnaby W Zall

Private Prisons In Oklahoma Public Safety At A Lower Cost
By Frank Keating

California's "Megan's Law" Protects Honest Citizens
By The Honorable Daniel E Lungren

Supreme Court Should Preserve Drug Crime Prosecution Tools
By The Honorable William T. McGivern, Jr

Administration Sends Mixed Messages On Anti-Terrorism Policy
By Steven R Valentine

Prison Capacity And Low-Level Drug Offenders
By Richard K Willard and Shannen W. Coffin

■ DISCOVERY PROCESS AND PROCEDURE

State Protective Orders Proposal Undermines Business
Civil Liberties
By Michael K Brown and Lisa M Baird

Changes Proposed To Federal Rules Governing Civil Litigation
By Ian Gallacher and Firouzeh D. Bahrapour

Socialization Of Evidence Recent Expansion Of An Old Theory
By Rolin P Bissell and James M Holston

A Three Step Process To Improve Flawed Federal
Discovery Rules
By Alfred W Cortese, Jr and Kathleen L. Blaner

Ruling On Discovery Management Sends Message To Bench
And Bar
By The Honorable John Ashcroft

The Self-Evaluative Privilege Preserving Confidentiality
Of Compliance Information
By David E. Sellinger and Christine R. Engelmaier

Changes To Federal Rules Needed To Defuse Discovery Abuse
By Alfred W Cortese, Jr

Proposals To Change Civil Discovery Rules Undercuts Protective
Orders And Privacy
By Jack H. Friedenthal

Mandatory Disclosure Rule 26(a)(1) An Unstable Regime
By Alfred W Cortese, Jr

The Case For Deleting Proposed Rule 26(a)(1) Mandatory
Disclosure From Pending Federal Rules Of Civil Procedure
Amendments
By Alfred W Cortese, Jr

A Cure Worse Than The Disease?. Litigation Proposal
Jeopardizes Business Privacy
By Alfred W. Cortese, Jr

■ ELECTION LAW

With Motor-Voter Bill, Congress May Have Invited A
Constitutional Challenge
By Maureen E. Mahoney and Michael J. Guzman

Campaign Finance Reform Bill Flouts Constitution
By Bobby R. Burchfield

■ EMPLOYMENT LAW AND REGULATION

State Employment Law Ruling Impacts Non-Compete Covenants
By Jonathan L. Sulds and Gregory W. Knopp

Contractors Must Be Cautious Of New Federal
Enforcement Tools
By Alissa A. Horvitz

Court Narrows Discrimination Law Coverage For
Business Subsidiaries
By Brian W. Jones

Court Rules Employment "Testers" Lack Standing In
Discrimination Cases
By Douglas A. Darch

Understanding And Responding To The Supreme Court's
Latest Rulings On Sexual Harassment
By Michael J. Connolly and Clifford J. Scharman

Are EEOC's Efforts To "Reinvent" Itself Succeeding?
By Kenneth M. Willner and Dianne C. Coombs

Is The EEOC Providing Fairness And Efficiency?
By Lawrence Z. Lorber

Employers' Hiring Practices And Disparate Impact Analysis
The Case Of EEOC v Joe's Stone Crab
By Laura A. Franze

Regulatory Cloak And Dagger?. The Use Of "Testers" In
Investigating Potential Employment Discrimination
By Stuart Gerson and Robert J. Lanza

OFCCP Testing Program Government Contractors Beware
By Stuart Gerson and Robert J. Lanza

Supreme Court Redefines Proof Needed In Age
Discrimination Cases
By Joseph A. Artabane and W. Neil Belden

Court Rules Against Retroactivity Of Family And Medical
Leave Regulations
By Joseph A. Artabane and W. Neil Belden

"Economically Targeted Investments" Using Pension Plans
For Social Good?
By Joni L. Andrioff

Understanding The Family And Medical Leave Act's
Regulatory Requirements
By Michael J. Connolly and Clifford J. Scharman

■ ENDANGERED SPECIES REGULATION

Habitat Conservation Plans: Adequate Protection For Species
And Private Property?
By Murray D. Feldman

Endangered Species Court Ruling At Loggerheads With
10th Amendment
By Galen G. Schuler

"Fly Specking" Interstate Commerce Court Scrutinizes Limits On Species Law

By Steffen N. Johnson

Federal Court Ruling Has Broad Impact On Species Regulation

By Galen G. Schuler and Patrick W. Ryan

Comment On Proposed Incentives For Private Species Protection Plans

By Galen G. Schuler

Victims Of ESA Regulation Gain Access To The Courts

By J. B. Ruhl

Court Ruling Frustrates Cooperative Species Conservation

By Gregory K. Wilkinson and Zachary R. Walton

Court Undermines Efforts To Balance Species Protection And Land Use

By Patrick W. Ryan

Lawsuit Challenges Federal Authority To Regulate Endangered Species

By Thomas C. Jackson

Activists' Position On Humane Taking Undermines Wildlife Management

By Stephen S. Boynton

Whaling Commission Flaunts Sound Science And International Law

By Daniel J. Popeo

Endangered Species Act vs. Private Property Rights

By Karl S. Lytz and Kimberly M. McCormick

Recovery Must Be Available For Endangered Species Mistakes

By J. B. Ruhl

Challenging ESA Intrusions On Private Land After *Sweet Home v. Babbitt*

By Timothy S. Bishop and Jeffrey W. Sarles

Supreme Court Should Rein In Government's Power In Endangered Species Case

By William F. Lenihan

U.S. Should Clean Up Illegal Policy On Wildlife And Marine Resources

By Stephen S. Boynton

Local Governments Challenge Endangered Species Act Policies To Regain Autonomy Over Land Use Planning

By J. B. Ruhl

Alabama Sturgeon Listing Misadventure Displays Fatal Flaws In Endangered Species Act

By Richard C. Shelby

Repairing The Damaged Credibility Of The Endangered Species Act Listing Process

By Michael J. Brennan and C. William Groscup

The National Biological Survey: A Prescription For Federal Regulation Of All Land Uses?

By William F. Lenihan

The Need For U.S. Leadership In Science-Based Wildlife And Renewable Resource Management

By Stephen S. Boynton

Of Mice And Men . . . Surviving Endangered Species Litigation

By David T. Hardy. Foreword by Charles W. Stenholm

Introduction by Kirk Fordice

Balancing Endangered Species Regulation And Antitrust Law Concerns

By Jan Pauw, Thomas J. Greenan and Douglas C. Ross

■ ENERGY

Ruling Reaffirms DOE's Duty To Dispose Of Nuclear Waste

By Rod Grams and Kris Sanda

DOE Inaction On Nuclear Waste Disposal Threatens Budget Process

By Rod Grams and Kris Sanda

The Arctic National Wildlife Refuge — America's Answer To Saddam Hussein

By Randall E. Davis

■ ENVIRONMENTAL JUSTICE

Environmental Justice "Guidelines" Avoid Due Process Safeguards

By Gerald H. Yamada

Michigan Appeals Court Rejects "Environmental Justice" Claims

By Marilyn A. Peters

EPA Appeals Board Expands Use Of Environmental Justice Analysis

By Charles Wesselhoft

Federal Rights Act Doesn't Authorize "Environmental Justice" Complaints

By Gerald H. Yamada

EPA's Select Steel Ruling. Is A Clearer Picture Of "Environmental Justice" Emerging?

By Russell J. Harding and G. Tracy Mehan, III

"Environmental Justice" Policies Undermine Revitalization Of Cities

By Congressman Joe Knollenberg

Civil Rights Laws Provide No Basis For Environmental Justice Claims

By David M. Young

Unanswered Questions In EPA's Environmental Justice "Guidance"

By Gerald H. Yamada

Activist Agencies Lack Authority To Impose Environmental Justice

By Gregg T. Schultz

Is There A Silver Lining For Industry In The Environmental Justice Movement?

By Jeffrey J. Truskey

■ ENVIRONMENTAL LITIGATION

Will Environmental "Citizen Suits" Survive Federal Courts' Scrutiny?

By Larisa Dobriansky and David H. Quigley

Federal Appeals Court Undercuts EPA's "Overfiling" Authority
By Gerald H. Yamada

Federal Appeals Court Reviews EPA's "Overfiling" Authority
By Mark J. Zimmermann

Courts Imposing Strict Limits On Environmental Citizen Suits
By Evan Slavitt

Activist Suits Transform Clean Water Act Into A Limitless Land Use Law

By George J. Mannina, Jr.

Federal Court Returns Reason To Wetland Regulation
By David Ivester

Appeals Court Ruling Challenges Federal Wetlands Authority
By Lawrence R. Liebesman and Rafe Petersen

Appeals Court Hears Arguments In Major Wetland Case
By Paul D. Kamenar

New EPA Clean Air Standard Vulnerable To Legal Challenge
By Kurt E. Blase

Alien Attack Foreign Environmental Claims Invade American Courts

By Layne E. Kruse

New Wetlands Rules Bury Landowners In Regulatory Morass
By Brenda Mallory

New "Right-To-Know" Proposal Reveals EPA's Misguided Priorities

By Peter L. Gray

Court Ruling Exposes EPA's Flawed Priorities And Tactics
By Don G. Scroggin

Global Warming Treaty Could Freeze U.S. Economic Growth
By General Richard L. Lawson

California Authorizes "Fix-It" Tickets For Minor Environmental Violations

By Kelley M. Taber

Pursue Free Market Incentives To Achieve Zero Emissions
By James M. Thunder

Supreme Court Must Overturn Decision Expanding Citizen Suits
By Leo P. Dombrowski

Oregon Federal Court Ruling Undermines Positive Public Land Use

By John J. Rademacher and Michael J. Stientjes

Oregon Supreme Court Rejects Representational Standing
By William H. Walters and Lynne A. Perry

Federal Court Imposes Limits On Environmental Citizen Suits
By Louis S. Zimmerman

Court Ruling Improperly Expands Environmental Citizen Suit Authority

By Kurt J. Olson

Courts Question Constitutionality Of Federal Environmental Laws

By Richard M. Kuntz

Court Decisions On Fee Awards Have Inspired Activist Clean Air Litigation

By H. David Kotz

Federal Courts Scrutinize Citizens' Groups' Fee Awards
By Kevin T. Haroff and Elizabeth E. Tweedie

EPA Appeals Board To Address Key Enforcement Issues
By Barry M. Hartman

Reduce Incentives That Encourage Activist Environmental Lawsuits

By Jared G. Carter

Citizen Suit Ruling Disrupts State Enforcement Authority
By Russell S. Frye

The Case For Creating A Safe Harbor For Corporate Leaders In Environmental Compliance

By Robert A. Wyman, Jr. and Russell Hayman

No Case Against Disney's America

By Daniel J. Popeo and Paul D. Kamenar

Oregon's Environmental Audit Privilege: An Incomplete First Step Toward Encouraging Voluntary Compliance

By W. Hugh O'Riordan

More Openness Needed On EPA Violations Of Paperwork Reduction Act

By Robert E. Coakley

EPA Hides Serious Flaws In Penalty Calculation From Public Scrutiny

By Robert H. Fuhrman

Constitutional Standing Doctrine Limits Environmental Citizen Suits

By Richard S. Lombard and R. Walton Shelton

Judges Compel Businessmen To Join Environmental Activist Groups In Violation Of First Amendment

By Alan M. Slobodin

Eighth Circuit's Decision On Retroactivity Casts Doubt On Some RCRA Prosecutions

By John C. Chambers

Legal Strategies And Responses To Activist Environmentalist Lawsuits

By Frank B. Cross Foreword by U.S. Senator Larry E. Craig
Introduction by Richard L. Stroup

Victims Of Special Interest Lawyers Fight Back In The Pacific Northwest

By John C. Scully

■ ENVIRONMENTAL REGULATION

Joint EPA/Industry Study Exhibits Clear Need For Unambiguous Rules

By James M. Thunder

EPA Pesticide Risk Assessment Methods Could Hinder Food Production

By Peter L. Gray

New DOJ Policies Increase Risk Of Parallel Environmental Prosecutions

By Thomas G. Echikson

Courts And Regulators Shape New Application Of Clean Water Act

By James M. Thunder

Plaintiffs Expand Use Of California's Prop 65 Into Unchartered Waters

By Barry P. Goode and Trenton H. Norris

Double Standard On Lawyers' Fees Encourages Activist Citizen Suits

By Scott W. Hardt

Kyoto Climate Treaty Advocates Act To Circumvent Senate Approval

By William H. Lash, III

Financial Condition A Factor When Courts Issue Clean Air Act Fines

By Roy Alan Cohen and Charles E. Erway, III

Introducing Enhbra: Balanced Environmental Management

By Michael O. Leavitt and John A. Kitzhaber

EPA Lacks Authority To Regulate Carbon Dioxide Emissions

By Gerald H. Yamada

"Global Warming" Treaty Would Pose Troubling Compliance Issues For U.S.

By Robert J. McManus

EPA Internet Disclosure Idea Plots Terrorist Road Maps

By William H. Lash, III

EPA's New "Right-To-Know" Plan Elevates Activism Over Science

By Peter L. Gray

Six Shortcomings Create Imperfect Environment For EPA's Mission

By James M. Thunder

EPA Circumvents Due Process To Dictate Consumer Product Choices

By Gerald H. Yamada

"Informal" Actions Allow Agencies To Duck Rulemaking Requirements

By The Honorable David B. Weinberg

Is Soil A "Navigable Water" Under The Clean Water Act?

By George J. Mannina, Jr.

An Invasion Of Privacy. The Media's Involvement In Law Enforcement Activities

By Henry H. Rossbacher, Tracy W. Young and Nancy E. Nishimura

EPA's Indefensible "Credible Evidence" Rule. A Critical Analysis

By Michael H. Levin

EPA Must Address Serious Concerns Over Proposed Clean Air Standards

By David M. McIntosh

Weaving Flexibility And Innovation Into EPA's

One-Size-Fits-All Design

By Russell J. Harding

Audit Privilege Law Delivers Environmental Benefits In Texas

By Lisa K. Anderson

Delegation Blackmail: EPA's Misguided War On State Audit Privilege Laws

By Timothy A. Wilkins and Cynthia A.M. Stroman

Will New Government Policies Frustrate

Environmental Auditing?

By Tiffany M. Schauer

New Lead Paint Regulations Benefit Lawyers NOT Public Health

By Kirk M. Herath

Clean Air Violations May Become Easier To Prove

By Jonathan S. Martel

Protections For Environmental Audits Encourage A New Generation Of Compliance

By W. Hugh O'Riordan

Comments Needed On EPA Permit Proposal

By Kurt J. Olson

Biodiversity Approach Tops EPA's Regulatory Agenda

By Alan M. Glen

EPA Worst-Case Scenario Rule

By E. Bruce Harrison and Joseph G. Wojtecki

EPA Needs Rulemaking On BEN Model

By James H. Burnley, IV, Phillip D. Brady, Robert Kirshner, and David F. Zoll

EPA Should Encourage Voluntary Compliance Without Discouraging Development of State Audit Privilege Laws

By Cynthia L. Goldman

Environmental Enforcement In The 1990s: Business' Triple Witching Hour

By George J. Terwilliger, III

The California Federal Implementation Plan (FIP). EPA's Formula For Economic Disaster

By James H. Burnley, IV

EPA's Proposed Leadership Project Pilot Program. A New Look At Environmental Audits

By Robert L. Hines

Proposed Ticket-Writing And Bounty Hunter Rules Will Enhance
EPA Enforcement Power

By Albert Gidari

Use Of Contingent Valuation In Environmental Enforcement
Threatens Substantial Increase In Damage Awards

By Frank B. Cross

Clinton Administration Should Not Punish Business With
International Treaty's Junk Science-Based Air Quality Demands

By Dr. Edward C. Krug

Wetlands Decision Argues Federal Courts Should Review
Regulatory Actions That Legislate Crimes

By David Andrew Price

Strategies To Minimize Your Risk Of Environmental Liabilities

By W. Hugh O'Riordan

15 Do's And Don'ts When Negotiating With The Government
On Environmental Enforcement Matters

By John N. Hanson

The Federal Government Flunks Test For Regulating Wetlands
On Oregon School District Property

By Paul D. Kamenar

More Absurdity From Washington: EPA's "Scarlet Letter"
Ozone Warning

By Glenn G. Lammi

Just Compensation For EPA's Wetland Protection Policy:
The Environmental Equivalent Of The S&L Bailout Crisis?

By Paul D. Kamenar

Reg-Neg/Rulemaking By Consensus: The EPA Experience

By Scott M. DuBoff and Kara L. Flanery

Air Quality Management Districts: Enforcement Practices
And Arbitrary Fines Threaten Jobs

By William T. Huston

A Guide To Understanding The Clean Air Act

By Dr. Stanley A. Millan

EPA Right-To-Know Law Is Constitutionally Suspect

By Paul D. Kamenar

New Wetlands Regulation Further Dampens Economy

By W. Lawrence Wallace

Playing By the Rules: Surviving Tougher Civil And Criminal
Enforcement Of The Clean Air Act Amendments

By Scott M. DuBoff and Andreas Leskovsek

Polystyrene — Myth Versus Reality

By Jerome H. Heckman

Unprivileged Environmental Audits Make It Difficult
To Be A Good Corporate Citizen

By Timothy J. Flannigan

■ FALSE CLAIMS ACT

Fraud Conviction Offers Lessons For Health Care Providers
And Counsel

By Gabriel L. Imperato

Court Erroneously Enriches False Claims Act Plaintiffs

By Robert K. Huffman and Peter B. Hutt II

GAO Report Underscores Unjust Use Of False Claims Act

By Sanford V. Teplitzky and Janet V. DiAntonio

Will New Federal Guidelines Arrest Overzealous Use Of False
Claims Act?

By Stuart M. Gerson

False Claims Act Being Misused To Impose Regulatory Agendas

By Richard N. Carrell and Daniel M. McClure

The Qui Tam Quagmire: Understanding The Law In An Era
Of Aggressive Expansion

By J. Andrew Jackson and Edward W. Kirsch. Foreword by

Norman R. Augustine. Introduction by The Honorable

Richard Thornburgh

Courts Properly Reject Parasitic Qui Tam Lawsuits

By Evan Slavitt

Supreme Court Should Rule On Meaning Of "Public Disclosure"
In Federal Qui Tam Law

By Jack Burgin

Courts Must Bar Qui Tam Suits By Government Employees

By John T. Boese and Shannon L. Haralson

Court Decisions Increase Qui Tam Liability Exposure

By Ronda L. Sandquist

Federal Court Scrutinizes Plaintiff's Lawyer In Qui
Tam Litigation

By Glenn G. Lammi

The Qui Tam Quandary: Public Interest And Public Safety

By Jed L. Babbitt and Paul N. Murphy

Federal Appeals Court Rules That Whistleblowers Can Sue
For Retaliation Without Bringing a Qui Tam Action

By Mark R. Troy

Government Attempts To Stretch The Limits Of The Civil False
Claims Act In War On Health Care Fraud

By Richard A. Feinstein

Addressing The Real Qui Tam Concerns In The False Claims Act

By Alan R. Yuspeh

Supreme Court Should Rein In Qui Tam Stampede

By Jed L. Babbitt and Mary Ellen Albin

Countering Plaintiffs' Lawyers: A Primer On Qui Tam Actions
Under The Civil False Claims Act

By Hugo Teufel, III and Thomas A. Lemmer

■ FEDERALISM

- States Need New Weapon To Fight Intrusive Federal Actions
By Michael O. Leavitt
- State Road Projects Vital To Economic Growth: Another Victim Of The Clean Air Act?
By Barry M. Hartman
- Constitutional Amendment Needed To Address Unfunded Federal Mandates
By U.S. Senator Orrin G. Hatch
- States Defend Constitutional Rights Against EPA
By Stephen F. Smith
- Commerce Clause Cases Could Limit Federal Environmental Regulatory Power
By Michael Scott Feeley and Lino J. Lauro

■ FOOD, DRUG & MEDICAL DEVICE REGULATION

- Court Ruling Frustrates Access To Off-label Drug Information
By Mark E. Boulding
- FDA "Draft Guidance" Suppresses Critical Health Care Information
By Marc J. Scheineson and Katherine Chen
- Public Comment Can Shape FDA Guidance On TV Advertising
By Mark E. Boulding
- Ten Questions For The Next FDA Commissioner
By Daniel J. Popeo
- Federal Appeals Court Finds State Food Labeling Law Unconstitutional
By Steven J. Rosenbaum and Sarah E. Taylor
- FDA Regulation May Inhibit Positive Uses Of The Internet
By Daniel A. Kracov and David J. Bloch
- Era Of Big Government Continues With Scrutiny Of Menus
By Elizabeth Toni Guarino
- Comment On Potential Revisions To FDA Regulations
By Alan R. Bennett
- FDA Prevents Doctors And Consumers From Receiving Health Care Information
By William G. Castagnoli and Harry A. Sweeney, Jr
- The Pedicle Screw And FDA: Another Example Of Politicized Science
By Neil Kahanovitz, M.D.
- FDA Suppression Of Advertising To Consumers Violates The First Amendment
By William C. MacLeod
- FDA Inhibits Free Flow Of Information On Medical Products
By Alan R. Bennett and Mark E. Boulding
- FDA Criminal Enforcement: Punish Intent — Not Relationships
By John F. Lemker

- FDA Financial Disclosure Proposal Should Be Withdrawn
By Jeffrey N. Gibbs
- FDA Reform Will Improve Nation's Health Care And Competitiveness
By Alan H. Magazine
- Oversight Of FDA Should Focus On Agency's Abuse Of Power And Misuse Of Science
By James R. Phelps
- FDA Direct-To-Consumer Advertising Regulation Raises Constitutional And Policy Concerns
By James M. Johnstone
- Weigh In Against FDA Suppression
By Richard A. Samp
- FDA's Legally Suspect Actions Invite Challenge
By Glenn G. Lamm
- FDA Paralysis Raises Health Care Costs
By Alan M. Slobodin
- The Real Problem With Health Care In America: While FDA Fiddles, Medical Approvals Lag And Americans Die
By Alan M. Slobodin
- What The FDA Doesn't Want You To Know Could Kill You
By Richard A. Samp
- Let's Stop Playing Culinary Roulette And Get On With Irradiating Food
By Paul B. Jacoby
- Regulate To Eliminate: The Real Goal Of The Neo-Prohibitionist Movement
By Dr. James T. Bennett
- The Delaney Clause Should Not Block A More Balanced Food Safety Policy
By Richard A. Merrill
- FDA Should Stay Bound By Its Advisory Opinions
By Jeffrey N. Gibbs
- FDA Criminal Enforcement: How To Prevent And Defend Against Liability
By Steven M. Kowal. Foreword by C. Manly Molpus
- Zero-Risk Standards For Pesticides In Foods Should Be Reversed
By Paul B. Jacoby, Frederick A. Provorny, and Sarah J. Ross
- Public Health Advances Impeded As Anti-Science Activists Thwart Food Safety Program
By Robert G. Hibbert
- FDA's Enforcement Agenda — What's Next?
By Stuart M. Pape
- Pesticide Tolerances And Food Safety: Two Hot Topics In Congress And The Courtroom In 1992
By Paul B. Jacoby
- There They Go Again: Activists Use Junk Science To Block Food Irradiation Technology
By Glenn G. Lamm

Proposed FDA Advertising And Promotion Guidelines Would Inhibit Free Exchange Of Ideas

By Melinda L. Sidak

FDA Food Agenda Overlooks The Basics

By Gary Jay Kushner

Targeting Of Brand Names By FDA And USDA Raises First And Fifth Amendment Issues

By Hugh Latimer

MSG "Junk Science": A Folly That Does Not Warrant

FDA Regulation

By Glenn G. Lamm

Proposed Legislation To Enhance FDA Enforcement Powers

Raises Constitutional Concerns

By Edward Dunkelberger

■ FRANCHISE REGULATION

Federal Appeals Court Rules Retroactive Infringement Of Iowa Franchise Act On Contracts Is Unconstitutional

By Mitchell S. Shapiro

South Carolina Supreme Court Sets Dangerous Precedent For State Taxation Of Franchisors

By Nicholas R. Minear and Lewis G. Rudnick

What Persuades Courts To Enforce Choice Of Law Provisions In Franchise Agreements?

By Lewis G. Rudnick

Retroactive Application Of Iowa Franchise Act Violates Constitution's Contract Clause

By Philip F. Zeidman

Courts Should Protect Pre-Existing Contract Rights From Redistributive Politics

By Alan H. Silberman and William T. Barker

■ HEALTH CARE

Federal Judge Dismisses RICO Action Against Aetna HMO

By Stephanie W. Kanwit

Mao v. Aetna: Better Health Care Through Civil RICO Suits?

By Stephanie W. Kanwit

Eroding "ERISA": The Legal Assault On Managed Health Care

By Daly D. E. Temchine

Keep Health Insurance Contract Disputes Out Of Courtroom

By The Honorable Harris W. Fawell and Sean Sullivan

Flawed Medicare Coverage Process Chills New Medical Technology

By Bradley Merrill Thompson and Kathleen Dodson

Health Care Fraud: A Provider's Guide For Achieving Legal Compliance

By Gadi Weinreich and Christopher G. Janney Foreword by U.S. Senator John D. Rockefeller IV Introduction by Bruce Merlín Fried

Obtaining Advisory Opinions Under Medicare Anti-Kickback Law

By Alexander S. Vesselinovitch

The Case For A High Criminal Intent Standard Under The Antikickback Law

By W. Bradley Tully and William A. Larkin

Courts Restrict Creative Enforcement Of Health Care Fraud Laws

By Sheldon Krantz and Stanley Soya

Health Insurance Reform Law: Unnecessary New Arrows In Government's Enforcement Quiver?

By Martha P. Rogers and Nancy Silverman

Court Decisions In Medicare Cases Expand HHS

Regulatory Authority

By Scott W. Taebel

New Managed Care Safe Harbor Regulation: Safety Or A Lee Shore?

By Stuart M. Gerson

Federal Court Upholds Protections Against Criminalization Of Health Care Laws

By Daniel Marino

Unitary Pricing For Drugs: Harmful To America's Health

By Bruce R. Stewart

HHS Vaccine Program: A Failed Attempt At Price Controls

By Rando W. H. Wick

HHS Advice Needed On Health-Care Fraud Laws

By Sanford V. Tephizky

Enforcing Health Care Reform: Can Congress Keep A Lid On Pandora's Box?

By Stephen L. Teichler

Comments Needed On HHS Development Of Voluntary Disclosure Program For Health Care Industry

By Daniel Marino

States' Power To Regulate Health Care Should Not Be Overlooked

By Joseph E. Schmitz

Universal Health Care And Illegal Aliens: Can The Former Exclude The Latter?

By David B. Rivkin, Jr.

How The Supreme Court Can Lower Medical Costs

By William J. Kilberg

Is A Federal Alcohol Excise Tax Increase Constitutional?

By Roger F. Thomson and Richard B. Berman

Federal Sin Tax Proposals: What's The Federal Government Doing Regulating Health Care Anyway?

By Joseph E. Schmitz

Establishing The Parameters For Global Health Care Budgets

By Frederick H. Graefe and Beth E. Morrow

Is Price Control Regulation Unconstitutional?

By John N. Drobak

■ IMMIGRATION LAW

Appeals Court Must Overturn Activist Proposition 187 Ruling
By Pete Wilson

Special Interests Continue Legal Assault Against Proposition 187
By Mark S. Pulliam

Judicial Activists Subvert Will Of Majority On Proposition 187
By Mark S. Pulliam

Illegal Immigration In California The Case For Reform
By Mark S. Pulliam

Addressing IRCA's Failures And Conflicting Requirements
For Employers
By Monte B. Lake

■ INSURANCE LAW

"Constitutional Regulation" Of Private Actors
A New Threat To Free Enterprise?
By Mark F. Horning and Shannen W. Coffin

New California Law Targets Professional Insurance Crooks
By Dennis Jay

Community Activists Pursue New Regulatory Mandates
For Insurers
By Kirk M. Herath

City Of New York v. Aetna Court Rejects Interference With State
Insurance Regulation
By Nancy L. Perkins

State Commissioners Can Stop Federal Insurance Regulation
By D. Joseph Olson

HUD Property Insurance Regulation Defies Congressional Intent
By Congressman Joe Knollenberg

Insurers Oppose HUD's Efforts To Apply Disparate Impact Theory
By Thomas M. Crisham and Mary Patricia Benz

Legal Experts' Proposal Threatens Insurance
Defense Agreements
By Ronald E. Mallen

HUD Property Insurance Regulation Threatens Effective
State Oversight
By Michael P. Duncan and Robyn B. Simon

Courts Should Strike Down HUD's Attempts To Regulate
Property Insurance
By Richard M. Esenberg

Time To Scrutinize HUD Funding Of Activist Groups
By Daniel J. Popeo

Regulating Property Insurance Is Beyond HUD's Jurisdiction
By Congressman John A. Boehner

No-Fault Insurance: Let The Market Decide
By Peter J. Spiro

The Fraud Tax: The Cost Of Hidden Corruption In America's
Tort Law
By Daniel J. Popeo

■ INTELLECTUAL PROPERTY

Submarine Patents Legal Activists' Weapon For Sinking
Property Rights
By L. Peter Farkas

Foreign Entities Held Accountable For Copyright Infringement
In U.S.
By J. Michael Wiggins and R. Charles Henn Jr.

Independent Patent Review For "Pipeline" Drugs Would
Advance Intellectual Property Rights
By Hon. Gerald J. Mossinghoff

Federal Circuit Maintains Close Oversight Of Patent
Office Decisions
By Hon. Gerald J. Mossinghoff

The Economic Espionage Act Of 1996 Taking Advantage Of
Enhanced Trade Secrets Protection
By Alissa A. Horvitz

Tobacco Ingredient Disclosure Law Chills Trade
Secret Protection
By David Wolf and Robert E. Rigby, Jr.

U.S. Supreme Court Upholds Key Patent Law Doctrine
By Hon. Gerald J. Mossinghoff

Biomedical Product Patent Protection Essential To High-
Tech Economy
By Reid G. Adler and Kate H. Murashige

Guide To The Government's New Antitrust Guidelines For
Intellectual Property
By Ilene Knable Gotts and Alan D. Rutenberg

GATT Strengthens International Intellectual Property Protection
By Donald E. deKieffer

Comments Needed On Justice Department's Intellectual
Property Guidelines
By The Honorable Susan G. Braden

Counterfeiting In The Information Age A Global Threat To
Intellectual Property Protection
By John S. Bliss

NAFTA May Not Fully Protect U.S. Patent Rights From
Challenge By Canada And Mexico
By Arthur Wineburg

New GATT Draft Text Is A Potential Step Backwards For
Intellectual Property Rights
By Harvey E. Bale, Jr.

International Protection Is Needed For Intellectual
Property Rights
By Lionel H. Olmer and Robert P. Parker

■ INTERNATIONAL TRADE & COMPETITIVENESS

Eco-Labeling A New Threat To Free Trade

By William H Lash, III

Fighting Foreign Corruption. Multilateral Efforts Can Create Level Playing Field

By Homer E Moyer, Jr and William M McGlone

Court Decision On Shrimping Undermines U.S Trade Policy

By Stephen J Orava

Do International Trading Rules Clash With State Environmental Laws?

By Leonard E Santos

Dumping And Government Subsidies The Remedies Available Under Domestic And International Trade Law

By J Kevin Horgan

How The World Trade Organization Will Settle International Trade Disputes

By Michael L. Whitener

Environmental Protectionism A Growing Threat To International Trade

By William H Lash, III

Federal Appeals Court Should Reverse Judicial Interference With NAFTA

By Robert P Parker

Balancing The Debate. A Free Enterprise Analysis Of Critical Issues In The NAFTA

By Donald E deKieffer

Proposed European Community Regulation On Novel Foods Poses A Potential Barrier To U.S. Biotech Products

By Peter F McLaughlin

HHS Secretary Sullivan's Meddling In Export Policy Is Bad For The Economy

By Glenn G Lamm

Fighting On Two Fronts The Battle For U.S. Competitiveness
By John T Hartley Foreword by Glenn W Bailey Introduction
by Edward H Budd Preface by David Packard Afterword by
U.S. Senator Orrin G. Hatch

Legal Wrangle Over "Fast Track" Imperils U.S. Economy

By Ambassador Carla A Hills

Free Markets And Free People Creating Legal Protections For Political Rights And Property Rights In Poland

By Lech Walesa

■ JUDICIARY & COURTS

Report Challenges Congress To Restructure Federal Court System

By Thomas E Baker

Judicial Activism An Inadequate Method Of Ensuring Quality Education

By Dr Eugene W. Hickok

Congress Directs Courts To Devise Dispute Resolution Programs
By John S Murray

Agencies' Enforcement Of Ambiguous Regulations Doesn't Deserve Judicial Deference

By Charles M Chadd and Jerome K Bowman

Erosion Of Judges' Compensation Threatens Judicial Independence

By The Honorable Charles B. Renfrew

Lifting The Veil TV Cameras In Federal Courts

By Jeffrey H Ballabon and Jonathan Sherman

Supreme Court Ducks Opportunity To Address Lawyer Financing Of Judicial Elections

By Thomas G Hungar

Improving The Judicial Discipline And Removal Process

By Robert W Kastenmeier

Maintaining User Involvement In Civil Justice Reform

By Jeffrey J Peck

Actions Of Federal Judge G Ross Anderson Raise Questions Of Bias

By David Andrew Price

■ LAWYERS

Organized Bar Shouldn't Shield Lawyers From New Competition
By Larry E Ribstein

Market Forces Will Compel Removal Of Restrictions On Multidisciplinary Practice

By Lawrence A Salibra, II

Time To Break Up Lawyers' Monopoly On Legal Services

By Andrew Updegrave

Federal Court Upholds Stricter Limits On Prison Litigation Fees
By David A Stein

Supreme Court IOLTA Ruling Vindicates Property Rights
By The Honorable Richard Thornburgh

State Professional Conduct Rule Limits Excessive Attorneys' Fees

By Frank A Shepherd

Supreme Court Should Uphold Clients' Property Rights In IOLTA Challenge

By William F Harvey

West Virginia Provides Model For Lawyer Discipline Across State Lines

By Ronald D Rotunda

Courts Limit Lawyer-Client Privileges Of In-House Counsels
By David G Keyko

"Extraordinary How Potent Cheap Music Is" The Case For Reforming Lawyer Advertising

By John D Stuckemeyer Foreword by Honorable Kenneth W Starr Introduction by C T. ("Kip") Howlett, Jr, Esq

Effective Legal Representation Agreements For Business
By Richard C. Reed

Lawyer Associations' Use Of Dues And Client Money Is
Politicized And Must Be Stopped
By John C. Scully

The Real Beneficiaries Of Liability Litigation And The Case
For Reform
By Robert W McGee

Hidden Scheme To Finance Radical Lawyers Plagues
Pacific Northwest
By John C. Scully

■ LITIGATION

Class Actions' Uncertain Future: Lessons From *Ortiz*
v *Fibreboard*
By Frederick T Smith

Will Bankruptcy Become Sole Defense Against Mass Tort Suits?
By James D Zinn

Excesses Of Activist Litigation Encourage Contingent
Fee Reform
By Daniel J Popeo

Key Federal Courts Split On Class Action Notice Issue
By Ian Gallacher

Judge Applies Brakes To Excessive Contingency Fees
By Robert V Pambianco

The Case For Abolishing Contingent Fee Arrangements
By Bert W. Rein and John E. Barry

State Courts Encourage Troublesome Pre-Litigation Ex
Parte Communications
By Nancy E. Pritikin

Will Supreme Court Ruling Ebb The Class Action Tide?
By Brian Anderson

Comments Needed In Ongoing Revision Of UCC Article
By Mark F. Mai

Pennsylvania Courts Present Model For Managing Mass
Tort Litigation
By Robert N. Spinelli and W. Matthew Reber

Federal Courts Must Review Abuses To Class Action Plaintiffs
By Lawrence W. Schonbrun

States Face Many Pitfalls When Hiring Contingency Fee Lawyers
By Glenn G. Lamm

Recent Court Decisions Provide New Defenses Against Class
Action Lawsuit Abuse
By Anthony Vale

Uniform Law On Sale Of Goods Faces Radical Changes
By Kevin E. Duke, Charles R. Keeton, and Andrew D. Koblenz

California Supreme Court Blocks EMF Lawsuits
By Sarah L. Olson and Douglas W. Hyman

Removing Class Actions To Federal Court: Preserve
Congress' Intent
By Mark W. Ryan

Counterattack: Fighting Back Against Unfounded Litigation
By James B. Hamlin and Michael L. Stern. Foreword by
Ned S. Goldstein

Courts Should Intensify Scrutiny Of Mass Tort Class
Action Lawsuits
By John B. Isbister

Will Fertilizer Maker Become Latest Victim Of Lawsuit Abuse?
By Michael D. Weiss

Fore! Will Golf Be Next Victim Of Judicial Excess?
By Glenn G. Lamm

Supreme Court Should Not Enrich Class Action Lawyers In
Shareholder Suits
By Catherine L. Clifton

States Should Reject Attempts To Expand Pro-Plaintiff
Liability Theory
By Thomas J. Graves

Class Action Plaintiffs Beware
By Bill Keffer

Unfair Lawsuits Threaten Volunteers
By William J. Cople, III

Courts of Flaw: America's Damaged Civil Liability System
By Robert R. Owen, CPA

Limited Liability At Risk: Throwing Out The Corporate Baby
With The Polluted Bath Water?
By Stephen B. Presser

The Inherent Power To Impose Sanctions: How A Federal Judge
Is Like An 800-pound Gorilla
By Thomas E. Baker

Proposal To Weaken Rule 11's Attorney Sanction Provisions
Could Stimulate Frivolous Litigation
By Former U.S. Senator Hank Brown

Everything Is Bigger In Texas — Including Jury Awards
By Bill Keffer

Amending Rule 56: The Genuine Issues
By Stephanie W. Kanwit

Asbestos Litigation Monster Rewards Plaintiffs' Lawyers While
Devouring Jobs And Economic Growth
By Glenn W. Bailey

Judicial Conference Should Reject Weakening Of Rule 11
By Richard A. Samp

Contingency-Fee Lawsuit Abuses In Oregon Must Be Eliminated
By Richard A. Samp

Washington Legal Foundation Brings Contingency Fee Reform
To The State Of Washington
By John C. Scully

Rule 11 — An Appropriate Way For Dealing With Frivolous Litigation

By The Honorable Malcolm J Howard

Supreme Court Should Call A Halt To "Forum Shopping" By Plaintiffs' Attorneys

By Paul D Kamenar

Reform Needed For Litigation Flood In Federal Courts

By The Honorable Edith H Jones

■ PREEMPTION

Constitution Provides No Support For Opponents Of Preemption

By Paul D Clement and Viet D Dinh

Federal Preemption Of State Tort Claims After *Medtronic, Inc v Lohr*

By Paul LeRoy Crist

Supreme Court Bypasses Airbag Preemption Case

By John J Sullivan

Food Law Reform And Federal Preemption You Can't Have One Without The Other

By Edward Dunkelberger

Court Decisions Favor Preemption In Medical Device Litigation

By Matthew J Iverson and David M Rownd

National Traffic And Motor Vehicle Safety Act Expressly Preempts State Common Law Actions For Failure To Install Airbags

By Roy T. Englert, Jr

Federal Preemption Is Powerful Antidote To Product Liability Explosion Against Medical Device Manufacturers

By Matthew J Iverson and David M Rownd

Courts Should Hold That FIFRA Preempts State Tort Claims

By Richard W. Stevens

Preemption Of State Tort Claims Under FIFRA After *Cipollone*

By Carter G Phillips

What *Cipollone* Means For Future Preemption Arguments

By Robert L Willmore

Who Should Regulate Business? Assessing The Federal-State Balance Of Power

By Wendell L Willkie, II and Alden F Abbott

The Case For Federal Preemption In Labeling

By George M. Burditt

Federalism And Federal Regulation The Case Of Product Labeling

By The Honorable Robert H. Bork

It Is Time To Bring Efficiency And Fairness To The "New Federalism"

By Thomas J. Graves

Federal Preemption Of Local Pesticide Regulation Does Litigation Matter?

By Robert J McManus

Supreme Court Should Take Opportunity To Affirm Preemption Of State Tort Claims

By Frederick A Provorny and Paul B Jacoby

Five Reasons Why The Federal Government Must Play The Lead Role In Food Labeling

By John W Bode and Anne R Harrison

■ PROCUREMENT LAW

Comment On Proposed "Blacklisting" Of Government Contractors

By F Gregory McKenna, Daniel L. Rosenberg, and Hugo Teufel, III

Supreme Court Says Government Must Live Up To Its Contracts

By Herbert L. Fenster and Hugo Teufel, III

Federal Circuit Decision Eases Government Contract Dispute Process

By Joseph A. Artabane and Lawrence P Block

Reform The Wasteful, Anti-Free-Market Federal Procurement System

By Jeffrey A. Lovitky

Government Contracts Reform. A Critical Analysis Of The Administration's Proposal

By Jed L. Babbitt and Thomas Earl Patton

Procurement Integrity Returns An Analysis Of The Impact Of Section 27 Of The OFPP Act On The Federal Procurement Community

By Jeffrey A. Lovitky

■ PRODUCT LIABILITY

New Jersey Supreme Court Limits Reasonable Drug Liability Defense

By Frederick T. Smith

Texas Court Affirms Relevance Of Personal Responsibility In Tort Suit

By Andrew G. Little

New Tort Restatement Whittles Away Reasonable Product Warning Defense

By Stephen G. Morrison, Michael W Hogue, and Patrick K. McCarthy

Ruling Expanding Duty To Warn Undermines Consumer Protection

By Saul Wilensky and Carl J. Schaerf

Court Strengthens Defense In Drug Liability Cases

By Joseph G. Blute

Restating Tort Law Is The Third Time A Charm On Product Liability?

By Frederick T. Smith

State Court Decision Imposes Liability Tax On Medical Products

By James E. Weger

Final Restatement Draft Undermines Traditional Tort Law Defenses

By Frederick I. Smith

Product Liability Litigation Creates Biomaterials Availability Crisis

By Matthew J. Iverson

The Case For Broad-Based Legal Reform

By The Honorable Spencer Abraham

Cipollone v. Liggett Group, Inc. — Now That The Smoke Has Cleared

By Victor E. Schwartz

Bringing Fairness To Product Liability

By J. Roy Rowland

Electromagnetic Fields — A Bonanza For Plaintiff's Lawyers?

By Richard K. Willard and Thomas M. Barba

New York Court Ruling Spells Trouble For Manufacturers Across U.S.

By Richard K. Willard and Thomas M. Barba

Heart Valve Cases: Is Pfizer The Next A.H. Robins?

By Robert F. Hanley

■ PROPERTY RIGHTS

Under New Ruling, Land Owners Can't Expect Constitutional Protection

By Steven J. Eagle

Injunction Upheld On State Law Compelling Trade Secret Disclosure

By Glenn G. Lammi

High Court Has Opportunity To Quietly Transform "Takings" Law

By Dwight H. Merriam

Settlement Finally Closes Dolan Property Rights Case

By David B. Smith

Federal Circuit Takings Case Strengthens Property Rights

By Marc R. Lisker

Illinois Court Decision Elevates Private Property Rights

By Steven J. Eagle

State Property Rights Protection Statutes: A Reassessment

By Timothy S. Bishop and Jeffrey W. Sarles

Loveladies Harbor v. United States: A Strong Takings Precedent For Landowners

By The Honorable George W. Miller

Washington State Supreme Court Should Reexamine Property Rights Rulings

By Elaine L. Spencer

Private Property Rights And Environmental Regulation: A Balance Can Be Achieved

By Congressman Billy Tauzin

Dolan v. City Of Tigard: Takings Clause No Longer A Poor Relation

By The Honorable George W. Miller and Jennifer L. Tiller

Owners Can Reduce Tax Assessments On Property Burdened By Environmental Restrictions

By John W. Heiderscheit, III

Regulatory Takings Under The Fifth Amendment.

A Constitutional Primer

By Michael M. Berger. Foreword by The Honorable Randall R. Rader. Introduction by Tad Taube

Dolan v. City Of Tigard: More Scrutiny Of Economic Regulation?

By Norman Karlin, Irving D. and Florence Rosenberg

Protecting Property Rights After The 1993 Flood: Using Wetland Banks To Manage The Midwest River Floodplain

By Robert Sokolove and P. Robert Thompson

Washington State Must Respect Property Rights When Implementing Growth Management Act

By Richard M. Stephens

A Property Owner's Guide To Reconciling Property And Speech Rights In An Era Of Special Interest Activism

By The Honorable Walter I. Edmonds

A New Direction Is Needed For Washington State Takings Law After *Lucas*

By Albert Gidan

Excessive Protection Of Salmon Will Endanger Jobs And Property Rights In Pacific Northwest

By James L. Huffman and John R. Thomas

Lucas: Solid Advance Or Pyrrhic Victory?

By Maurice J. Holland

Oregon Land Use Law After *Lucas*

By David B. Smith

The Supreme Court's 1992 Taking Decisions: A Sputtering Start But A Strong Finish

By Michael M. Berger

■ PUNITIVE DAMAGES

Voluntary Compliance Efforts Should Be Considered When Judging Punitive Damages

By Joseph E. Murphy and S. Mark Tuller

Punitive Damages Tax Proposal: A New Weapon For Trial Lawyers

By Victor E. Schwartz and Mark A. Behrens

Supreme Court Ruling May Help Victims Of Excessive Punitive Damages

By Theodore J. Boutros, Jr.

When Judges Ignore *Gore*: One State's Misguided Review Of Punitive Damages

By Bruce M. Allman

BMW v Gore, One Year Later "The Road To Nowhere" Or Meaningful Guidance?

By Evan M. Tager

New State Data Confirms Runaway Abuse Of Punitive Damages

By John H. Sullivan

Alabama High Court Ignores Lessons Of BMW v Gore

By Adam B. Reed

Punitive Damage Awards After BMW v Gore

By The Honorable Richard Thornburgh

Justices Void Punitive Award Five Eyebrows To Four

By Thomas E. Baker

Federal Appeals Court Finds Punitive Damage

Award Unconstitutional

By John L. Pemberton

Multiple Imposition Of Punitive Damages The Case For Reform

By Victor E. Schwartz, Mark A. Behrens and Lori A. Bean

Supreme Court Should Clarify Due Process Limits On Punitive Damage Awards

By Andrew L. Frey and Evan M. Tager

Punitive Damages Explode In Alabama

By Davis Carr and Forrest Latta

A Punitive Damages Primer. Legal Principles And Constitutional Challenges

By Arvin Maskin and Peter A. Antonucci Foreword by Alfred C. DeCrane, Jr. Introduction by George S. Frazza

Denial Of All Judicial Review Of Punitive Damages Awards Violates Due Process Rights

By David G. Leitch

Punitive Damages One More Time For The U.S. Supreme Court To Get It Right

By Philip A. Lacovara

Punitive Damages Explosion: Fact Or Fiction?

By Stephen M. Turner, Lawrence R. Jerz, Robert E. Fuller, George S. Branch and James D. Miller

Demystifying The Roscoe Pound Foundation Study Of Punitive Damages — Propaganda On Parade

By Victor E. Schwartz

How To Fight Punitive Damage Awards In Court

By Theodore B. Olson and Theodore J. Boutrous, Jr. Foreword by Allen E. Murray Introduction by Anne H. McNamara Preface by L. Gordon Crovitz

Illinois Court Strikes A Blow Against Runaway Punitive Damage Awards

By Andrew L. Frey

The Silver Lining Of Pacific Mutual Life Insurance Co. v Haslip Perspectives On How To Change The Process

By Kendall R. Cunningham

■ RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO)

DOJ Erroneously Expands Reach Of RICO Law

By Stuart Gerson

DOJ's Use Of RICO In Tobacco Suit Is Wrong

By William H. Lash, III

Civil RICO: Plaintiffs' Lawyers' New Weapon Of Choice?

By Daniel J. Popeo

Supreme Court Should Limit Civil RICO Claims

By Claire Prechtel-Klusgens

■ SCIENTIFIC EVIDENCE

Court's Scientific Evidence Ruling Offers New Guidance On Daubert

By John R. Henderson and Diane C. Presti

High Court Reinforces Need For Sound Science In The Legal Process

By Frederick T. Smith and John C. Mills

Improving Objectivity Of Economic Expert Testimony In Liability Litigation

By Dr. Thomas R. Ireland

Judicial Oversight Can Restrain Regulators' Use Of Junk Science

By Alan Charles Raul and Stephen F. Smith

Daubert Applied To Reject "Chemical Sensitivity" Junk Science

By Armistead J. Maupin and M. Keith Kapp

"Non-Scientific" Experts: What Degree Of Judicial Scrutiny Should They Face?

By David E. Bernstein

Daubert Scrutiny Applies To Technical "Experts" Testimony

By Glenn G. Lammi and Josh A. Chafetz

Judges Should Resolve Scientific Disputes In Toxic Tort Litigation

By Paul S. Miller and Bert W. Rein

"Chemical Sensitivity" Claims Vulnerable To Daubert Scrutiny

By Anita Hotchkiss and Linda Pissott Reig

Appellate Court Set To Rule On Major Scientific Evidence Issue

By Frederick T. Smith

A Split Among Federal Courts Undermines Daubert Standards

By Regina A. Petty and Thomas W. Tierney

Supreme Court Should Confirm Trial Judges' Authority To Review Scientific Evidence

By The Honorable Richard Thornburgh

Georgia Ruling On Junk Science: A Model For All State Courts

By Nolan C. Leake

Motion To Exclude Experts Can Expel Junk Science Before Trial

By Charles F. Preuss and Kenneth P. Conour

Effectively Applying *Daubert*: Lessons In Judicial Gatekeeping
By Marc S. Klein

Court-Appointed Experts Help Keep Out Junk Science
By James B. Hamlin

Courts Must Vigorously Scrutinize Testimony By
"Professional Experts"
By James D. Griffin

Scientific Evidence Under *Daubert*: Utilizing The New Standard
At Trial

By Laura E. Ellsworth

"Junk Science" In The Courts: Problems And Solutions
By James B. Hamlin

Scientific Evidence In The Courtroom: Admissibility And
Statistical Significance After *Daubert*

By Robert P. Charrow and David E. Bernstein Foreword by The
Honorable Patrick E. Higginbotham Introduction by Dr. James
S. Todd Preface by Frederick L. Webber

■ SECURITIES REGULATION

Securities Fraud Defendants Win New Ammunition To
Fight Lawsuits
By Francis J. Menton, Jr.

Will Corporate Officers Pay The Tab For Year 2000 Problems?
By former U.S. Senator George Allen and Alex Slaughter

Court Deals Setback To "Professional Plaintiffs" In Securities
Fraud Lawsuits
By Michael D. Torpey and Robert C. Sepucha, Jr.

Comment On Proposed SEC Rule On Proxy Statements
By Joseph P. Galda

Uniform Standards For Securities Fraud Suits Are Consistent
With Federalism
By Stephen B. Presser

Courts Should Uphold High Securities Fraud Intent Standard
By Jonathan J. Lerner and Mark W. Smith

Federal Court Dismisses Frivolous Securities Class Action
By George D. Kreye

Securities Fraud Proposal Threatens California's Economy
By Theodore D. Roth

California Ballot Initiative On Securities Fraud Suits.
A Critical Analysis
By James F. Sweeney

Federal Securities Litigation Reform: Key Provisions And
Future Questions
By Philip A. Lacovara

SEC And FDA Conflict Reduces Quality Of Medical
Product Information
By David M. Hoffmeister and Richard A. Shupack

Plaintiffs' Lawyers' Bonanza In Shareholder Lawsuits Chills
Job-Creating Investment

By U.S. Senator Pete V. Domenici

Business Community Has Opportunity To Influence
Developments On SEC Proxy Rules

By James R. Doty

Environmental Expenses: Disclosure Requirements For
Public Corporations

By Vicki R. Patton-Hulce

New Rules On The Time Period For Filing Fraud Claims Under
Rule 10b-5 Of The Federal Securities Laws

By Andrew N. Vollmer and James Lee Buck, II

■ SENTENCING GUIDELINES

Proposed Environmental Guidelines Would Require Courts To
Impose Maximum Fines On Business

By Benjamin S. Sharp

Newly Proposed Guidelines Require Immediate Response From
Corporate Community

By Irvin B. Nathan

Developing Compliance Programs Under The U.S. Corporate
Sentencing Guidelines

By Alan R. Yuspeh and W. Neil Eggleston

Understanding And Complying With The U.S. Corporate
Sentencing Guidelines

By Irvin B. Nathan and Arthur N. Levine

New Corporate Sentencing Guidelines Are Vulnerable To
Constitutional And Statutory Non-Compliance Challenges
By Joseph R. Creighton

New Corporate Sentencing Guidelines May Be Unconstitutional
And Should Be Challenged

By Paul D. Kamenar

Can Corporations Learn To Live With The New
Sentencing Guidelines?

By Robert J. Giuffra, Jr.

What Corporations Need To Know About The Proposed
Sentencing Guidelines

By Robert J. Giuffra, Jr.

■ SPECIAL INTEREST ACTIVISM

HUD Victimizes Low Income Families With Forced
Housing Initiative

By Dr. Ronald D. Utt

Court Upholds Restrictions On Legal Services Corporation
By Robert V. Pambianco

Courts Rebuff HUD Attacks On Housing Occupancy Limits
By Christopher B. Hanback

Compelled PIRG Student Fees Offend Constitutional Freedoms
By Craig Rucker

■ STATE LAW DEVELOPMENTS

States And Cities Lack Authority To Impose Indirect Trade Sanctions

By Brannon P Denning and Jack H. McCall, Jr.

Are There Constitutional Limits To Activist-Empowering Initiatives?

By Thomas J. Graves

Business Courts Can Improve State Judicial And Legal Systems

By Robert L. Haig

Activist State High Court Has No Faith In Contracts

By Peter J. Pizzi

Florida's Position In Prisoner Case Contradicts Medicaid Lawsuit

By Glenn G. Lamm

New Business Court Improves State's Legal Environment

By John L.W. Garrou

New State Laws Provide Immunity From Suit On Job References

By Donn C. Meindertsma

Appellate Decision On "Official English" Puts Public Employees Above The People

By Barnaby W. Zall and David Andrew Price

Judges Have No Role In Wisconsin Welfare Reform

By Bruce A. McIlroy

Citizens Utility Boards Require Legal Scrutiny: Ralph Nader's Franking Privilege Nixed By N.Y. Court

By Daniel J. Popeo

Activist Lawyers Fight Welfare Reform In New Jersey

By David Andrew Price

California Supreme Court Reinstates Reason To Landowners' Responsibility To Crime Victims

By Donald A. Vaughn

Texas Court Decision Should Not Be Used To Expand Dram Shop Liability

By James B. Jacobs

California's Middle-Class Tax Is In Judicial Trouble

By Richard A. Samp

The Supreme Court Creates A New Weapon To Control Unlawful State Regulation

By Richard A. Samp

■ SUPERFUND

Recent Supreme Court Victory Undercuts Superfund's Retroactivity

By George D. Baker and Barbara Wixon Bonfiglio

"Operator" Liability Under Superfund: The Impact Of *Bestfoods*

By Susan D. Sawtelle

EPA's Missteps On Brownfields: What Lessons Can We Learn?

By James M. Thunder

Supreme Court Should Uphold Limited Liability In Superfund Case

By Donald Falk

Changing Judicial Review Standard For Resource Damages Claims Sets A Dangerous Precedent

By George J. Mannina, Jr.

Liability Relief For Lenders: Positive First Step In Fixing Superfund

By W. Hugh O'Riordan

Conflicting Court Opinions Intensify Superfund Liability Risk

By Daniel J. Popeo

Federal Court Chips Away At The Superfund Monolith

By Seth D. Jaffe

Illinois' "Brownfields" Law: Cleaning Up Waste And Urban Blight

By Senator William F. Mahar

Vague Compliance Standards Render CERCLA Defense Useless

By John B. Farmer

Federal Circuit Court Succumbs To CERCLA Seductress

By Richard M. Kuntz

EPA Issues Policy Statement On Superfund Lender Liability

By Richard M. Kuntz

A Road Map For The CERCLA Innocent Purchaser Defense: ASTM Standard Practices

By Vicki R. Patton-Hulce

Clean Up Superfund's Legal Problems

By Thomas J. Graves

Effective Superfund Reform: It's Time To Delegate The Program To The States

By Charles L. Grizzle

What You Need To Know About ATSDR's Role In The Superfund Decision-Making Process

By Dr. Barry L. Johnson, James Baller and Dr. George L. Carlo

Business Exposed To New Liability With Upcoming Health Assessments of Superfund Sites

By James Baller and Dr. George L. Carlo

Superfund: It's Time For Repeal After A Decade Of Failure

By Robert W. McGee

CERCLA Lender Liability: Time To Stop The Chilling Of America's Economy

By W. Lawrence Wallace

■ TAXATION

Are Federal Consumption Tax Proposals Constitutional?
By Joseph E. Schmitz

IRS Exceeds Its Authority In New Approach To Regulating
Employee Tip Reporting
By Carl W. Hampe

Quo Vadis (Wither Goest Thou) Taxation. *In Futuro Or
Ex Post Facto?*
By Joseph E. Schmitz

Pending Supreme Court Case Threatens To Remove Limitations
on State Corporate Income Taxation
By Stephan G. Weil

■ TORT LIABILITY

Federal Court Rejects Tort Claims Alleging Speculative Damages
By Charles A. Newman and Joy L. Holley

Oregon Tort Reform Is Latest Victim Of Judicial Nullification
By Victor E. Schwartz, Mark A. Behrens, and Leah Lorber

Will Florida Tort Reform Survive Inevitable Judicial
Repeal Effort?
By Jodi L. Chase

Judicial Intervention Undercuts Tort Reform In Michigan
By Thomas J. Foley

Equal Justice Denied If Congress Assists DOJ Quest To Sue
Unpopular Defendants
By Victor E. Schwartz, Mark A. Behrens, and Leah Lorber

Justice Department Tobacco Suit Would Undermine Civil
Justice System
By Glenn G. Lamm

Courts Should Dismiss Cities' Flawed Gun Lawsuits
By Mark W. Smith

Jury Verdict On Gun Liability Casts Shadow Over Cities' Suits
By R. Shawn Gunnarson

State Courts Continue To Reject Novel Medicaid
Reimbursement Suits
By Glenn G. Lamm

When Judicial Activism Trumps Tort Reform
The Illinois Experience
By John E. Muench

Will Alabama Ever Reform Its Punishing Tort System?
By Forrest S. Latta

States Pursue Perilous Path When Altering Rules In
Medicaid Lawsuits
By Jon L. Shebel

Will Traditional Tort Law Survive "Medicaid
Reimbursement" Lawsuits?
By Glenn G. Lamm

Abuse Of The Civil Justice System Threatens American
Volunteerism

By former U.S. Senator Rick Santorum

Courts Should Rebuff Assault On "Learned Intermediary" Rule
By Karl E. Seib, Jr.

Property Owners' Liability For Criminal Acts On Their Premises:
Are There Foreseeable Limits?
By Frederick D. Baker and Denise A. Cole

Can Statistical Analysis Bring Rationality To Pain And
Suffering Damages?
By Frederick T. Smith and John C. Mills

State High Court Should Uphold Illinois Tort Reform Law
By John E. Muench and Robert M. Dow, Jr.

When Lightning Strikes: Are Golf Courses Liable?
By Deborah G. Means

Novel Legal Theories Rejected In Medicaid Reimbursement Suit
By Kevin J. Dunne and Frederick D. Baker

One Step Back, Two Steps Forward On Strict Liability
In California
By Peter W. Davis

Who Should Make America's Tort Law: Courts Or Legislatures?
By Victor E. Schwartz, Mark A. Behrens, and Mark D. Taylor
Foreword by U.S. Senator John D. Rockefeller, IV
Introduction by John Greene

Illinois High Court Should Uphold Key Provision Of Tort
Reform Law
By Nell Kilburn Shapiro

State High Court Scrutinizes Illinois Tort Reform
By Mark S. Killion

Florida Medicaid Reimbursement Suit Undermines Civil
Justice System
By Jodi L. Chase

Supreme Court Decision Bolsters Tort Reform Efforts
By Paul D. Clement

Alabama Supreme Court Improperly Amends State Tort Law
By Davis Carr

Tort Reform In The States: The Oregon Model
By John DiLorenzo, Jr. and Larry Campbell

The "Tortification" Of Contract Law: An Experiment
Destined To Fail
By Ellis J. Horvitz and Elizabeth Skorcz Anthony

Uncertain Future For California EMF Litigation
By Sarah L. Olson

Suits To "Reimburse" States For Public Medical Expenses.
Creating A Dangerous Precedent For Trial Lawyers
By Glenn G. Lamm

Tilting Scales Of Justice To Favor State In California Medicaid Suits Creates A Dangerous Anti-Business Trend
By Glenn G. Lamm

Florida's Stripping Of Common Law Tort Defenses To Recover Medicaid Costs Violates State Constitution
By Fletcher N. Baldwin, Jr

Retroactive Elimination Of Tort Law Defenses In Florida's Third-Party Liability Act Is Suspect Under U.S. Constitution
By Maurice J. Holland

Changes In Florida's Medicaid Program Would Create Litigation Explosion
By Nicolás J. Gutiérrez, Jr

The Case For Tort Reform In New Jersey
By Philip Kirschner, Esq

■ TOXIC TORTS

Use Of Market Share Liability Improper In Lead Lawsuits
By Alan Kaminsky and James P. Tyrre

Courts Should Deny Class Action Status For Allegations Of Future Injury
By Brian Anderson and Paul Horwitz

Ohio High Court Exposes Inequities Of Market Share Liability Theory
By James J. Dillon

Enforcers Of California's Prop. 65 Are Now Fuming Over Diesel Fuel
By Gene Livingston

California Judge Applies Brakes To Prop. 65 Diesel Lawsuit
By Norman C. Hile, Bruce S. Klafter, and Christopher E. Krueger

Warning: California's Prop. 65 Is An Economic Health Hazard
By Marc S. Ullman

Private Enforcement Of Prop. 65 Violates California Constitution
By Jeffrey B. Margulies and Thomas J. Graves

Courts Should Scrutinize Use Of Epidemiology To Prove Causation
By Frank H. Santoro

Restraining Private Enforcement Of California's Proposition 65
By Jeffrey B. Margulies

Medical Monitoring Claims: Paying Today's Real Dollars For Tomorrow's Illusory Injuries
By Peter A. Antonucci

■ WORKPLACE SAFETY & HEALTH REGULATION

Beware The Stresses And Strains Of OSHA's Ergonomics Proposal
By Jerome K. Bowman

Is The OSHA Review Commission Treading On State Sovereignty?
By Dr. Velma Montoya

Court Rejects Agency's Alteration Of Equal Access To Justice Act
By Kent W. Seifried

OSHA Ergonomics Proposal Is Fatally Flawed
By Representative Cass Ballenger

Court Restricts Agencies' Ability To Informally Compel "Cooperation"
By Eugene Scalia

New OSHA Rule Will Impose Mandates Without Due Process
By Jerome K. Bowman

Local Citizen Inspection Law: Taking "Right-to-Know" Too Far?
By Steve Barnett

Influential Court Queries OSHA On Meaning Of "Repeat Violation"
By Robert P. Davis

OSHA Workplace Violence Guidance Creates New Liability Concerns
By Peter A. Susser

Court Blocks OSHA Attempt To Significantly Expand Its Authority
By Charles M. Chadd and Jerome K. Bowman

Judge's Ruling Exposes Junk Science Fueling OSHA's Actions On Ergonomics
By Willis J. Goldsmith and Jacqueline M. Holmes

OSHA's New Enforcement Initiative: Cooperation Or Coercion?
By W. Scott Railton

Mandatory Safety Programs: OSHA's Ultimate Regulation?
By Robert C. Gombar, PC and Arthur G. Sapper

Hostile Work Environment Claims Implicate Free Speech Rights
By William V. Whelan and Richard M. Freeman

New OSHA Hazard Abatement Rule Brings Burdens And Opportunities
By George R. Salem and Robert G. Lian, Jr

OSHA Authority Over Contractors Expanded
By Donald W. Jones

Worker's Compensation Reforms Cut New York Businesses' Costs And Increase Worker Safety
By former Governor George E. Pataki

OSHA Ignores Sound Science In Ergonomics Efforts
By Willis J. Goldsmith and Jacqueline M. Holmes

Will California Set The Standard For Ergonomics Regulations?
By Jeffrey M. Tanenbaum

New OSHA Abatement Programs May Reduce Employers' Rights
By Mark N. Savit and Adele L. Abrams

Court Holds Repeat OSHA Prosecutions Unconstitutional
By Arthur G. Sapper

Comment On OSHA Workplace Violence Guidelines
By Peter A. Susser

Expanding The "Maine 200" Program: Is OSHA Pulling A Bait And Switch?
By Richard D. Wayne

OSHA Issues Proposal On Recordkeeping Requirements

By Frederick D Braid

Administrative Court's Decisions Erode OSHA Penalty Policy

By Arthur G. Sapper

FOIA Requests. A Valuable Weapon In Battling Defiant OSHA

By Donald W. Jones and Jason N. Shaffer

Repeat OSHA Prosecutions Violate The Fifth Amendment

By Arthur G Sapper and Laura Rolander

OSHA's New Litigation Strategy How Employers Should React

By Charles M Chadd and Jerome K Bowman

Bigger OSHA Penalties Ineffective At Reducing

Workplace Injuries

By Mark M Moran

Should OSHA Hold Employers Responsible For Violence

In The Workplace?

By Frederick D Braid

OSHA's New Interpretation Of "Imminent Danger" Poses

Significant Threat To Business

By Willis J. Goldsmith and Michael F. Dolan

OSHA's Proposed Indoor Air Quality Standard An \$8.1 Billion

Burden On Economic Growth And Job Creation

By F. Edwin Froelich and Traci J Stegemann, J D.

Sixth Circuit Provides Employers With Legal Basis To Challenge

OSHA Inspections

By Lawrence P Halprin

OSHA's Proposed Indoor Air Quality Standard Adds Many

Burdens And Requires Response

By Charles M Chadd

Can OSHA Constitutionally Bring Criminal Charges Against

Businesses Based On Evidence Obtained Under An

Administrative Inspection Warrant?

By Lawrence P Halprin

How Much Judicial Deference To OSHA? — The Dangers Of

Unchecked Administrative Power

By Arthur G. Sapper and Robert C. Gombar

Will OSHA Reform Undercut Goal Of A Safer Workplace?

By Baruch A. Fellner

State And Federal Regulation Of Workplace Health & Safety

A Delicate Balance

By Peter A. Susser

OSHA'S Use Of General Duty Clause Raises Questions Of

Fairness And Legislative Intent

By Nina G Sullman and Karen L Taylor

OSHA's Egregious Policy For General Duty Citations

Is Overturned

By W Scott Railton

How To Survive An OSHA Inspection In Today's

Regulatory Climate

By Robert D. Moran

Will Businesses Lose Their Day In Court To Challenge

OSHA Citations?

By W. Scott Railton

Serious Questions Raised By OSHA Reform Proposal Need

To Be Answered

By Michael J Connolly and Clifford J Scharman

Sorting Out ADA's Conflict With OSHA

By F. Edwin Froelich and Elizabeth A. Cullen

The Occupational Safety And Health Act A Case For

Expanded Preemption

By Lynn L Bergeson

Index of Authors

A							
Abbott, Alden F	64	Ballenger, Cass	70	Blaner, Kathleen L	34, 54	Burcat, Joel R	36
Abraham, Spencer	65	Baller, James	68	Blase, Kurt E	56	Burchfield, Bobby R	54
Abrams, Adele L	70	Bancroft, David P	53	Blaug, Sasha	30	Burditt, George M.	50, 64
Abrams, Floyd	15	Barba, Thomas M	65	Blickenstaff, Leshe S	38	Burgin, Jack	58
Adler, Reid G	61	Barbour, Amanda B	19	Bliley, Thomas J	24	Burke, Christopher J	19
Akiyama, Larry	41	Barbour, Haley	43	Bliss, John S	61	Burnley, James H, IV	57
Albers, Wendy S	48	Barker, Robert	19	Bloch, David J	50, 59	Bush, Jeb	43
Albin, Mary Ellen	58	Barker, William T	60	Block, Lawrence P	64	Byelich, Ninette	38
Alexis, Geraldine M	10-11	Barnett, Steve	70	Bloom, Joshua A	21, 24, 52		
Alfonso, Evelyn	20	Barr, Bob	49	Blute, Joseph G	64		
Alford, Harry C	22	Barr, William P	53	Boasberg, James E	51	C	
Alford, Stewart F, IV	26	Barry, John E	63	Bode, John W	13, 26, 51, 64	Caccia, Ralph J	19
Al-Jurf, Saadeh	10	Bartman, Thomas R	23, 49, 53	Boehner, John A	61	Cahoon, Ladd	47
Allard, Nicholas W	18	Bartolomucci, H		Boese, John T	24, 58	Calteux, Konrad L	42
Allen, George	52, 67	Christopher	19, 31	Bonat, Christian M L	35	Calfee, John E	51
Allen, Pamela J	29	Barton, Scott E	37	Bond, Kit	13	Calica, Andrew J	38-39
Allman, Bruce M	65	Barzilay, Ilan N	30	Bonfiglio, Barbara Wixon	68	Callagy, John M	13
Allman, Thomas Y	20	Baylson, Michael M	20	Boraman, Steven J	43	Callaway, Edward M	23
Amorosi, Edmund M	19	Beales, J Howard	52	Bork, Robert H	51, 64	Calluori, Joseph	48
Amundsonm Jan	15	Bean, Lori A	66	Boulding, Mark E	59	Camacho, Alejandro E	22
Anderson, Brian	33, 44, 63, 70	Beard, Paul J, II	37	Boutrous, Theodore J, Jr	65-66	Campbell, Larry	69
Anderson, Lisa K	57	Beaty, John B	12	Bowman, Jerome K	47, 49, 62, 70-71	Cane, Paul W, Jr	48
Andrioff, Joni L	54	Beck, James M	45	Boyden, Bruce	19	Canter, David H	53
Anthony, Elizabeth Skorcz	69	Becker, Robert D	29	Boyle, Peter	10	Card, Andrew H, Jr	49
Antonucci, Peter A	66, 70	Behrens, Mark A	11, 32, 34, 37, 45-46, 65-66, 69	Boynton, Stephen S	55	Carlo, George L	68
Armitage, Robert A	29	Beier, David	49	Bradbury, Steven G	18	Carlson, Marinn	10
Armstrong, Christopher J	47	Beisner, John	44	Braden, Susan G	61	Carr, Christopher J	22
Arnold, Douglas S	20	Belden, W Neil	54	Brady, Phillip D	57	Carr, Davis	66, 69
Arquit, Kevin J	48	Bennett, Alan R	17, 27, 51, 59	Braid, Frederick D	71	Carr, Melanie	14
Artabane, Joseph A	54, 64	Bennett, James T	59	Brais, Louise M	41	Carrell, Richard N	58
Ashcroft, John	54	Bennett, Jennifer B	13	Braithwaite, Zorah	10-11	Carroccio, A Thomas	32
Atwood, James R	11	Bentivoglio, John	27	Braker, Gregory S	14	Carter, Jared G	56
Auerbach, Pamela J	11	Ben-Vemiste, Richard	13, 19	Branch, George S	66	Casey, Lee A	20, 35, 42
Augustine, Norman R	58	Benz, Mary Patricia	61	Brennan, Michael J	55	Cass, Ronald A	29
Austrian, Mark L	31	Berenson, Bradford A	35	Brenner, Daniel	51	Castagnoli, William G	59
Axelrad, David M	48	Berger, Michael M	65	Breuerm, Lanny A	19	Chadd, Charles M	49, 62, 70-71
Azcuenaga, Mary L	11	Berger, Peter	30	Brevic, Scott M	47	Chafetz, Josh A	66
		Bergerson, Stephen R	51	Briscoe, John	22	Chalmers, Paul	39-40
		Bergeson, Lynn L	24, 53, 71	Brocke, Douglas J	53	Chamberlin, Susan E	51
		Berkman, Felice	53	Brody, Steven G	17, 50	Chambers, John C	56
		Berkowitz, Kenneth P	17	Brooks, Brian P	33	Chang, James	44
B		Berman, Joshua G	19	Brooks, Sharon D	25	Chanin, Jeffrey R	51
Babbitt, Jed L	53, 58, 64	Berman, Richard B	60	Brown, Christopher A	16, 25	Charrow, Robert P	67
Bagley, Grant P	26, 27	Bernstein, David E	38, 66-67	Brown, David E, Jr	39	Chase, Jodi L	69
Bahrampour, Firouzeh D	54	Bernstein, Peter D	40-41	Brown, Hank	63	Chen, Katherine	59
Bailey, Glenn W	62-63	Berrington, Craig	28	Brown, Michael K	14, 16, 35, 45, 54	Chertoff, Michael	53
Baird, Elizabeth H	20, 40	Bersch, Lynn A	47	Brownell, F William	23	Chesney, Robert	35
Baird, Lisa M	14, 16, 35, 45, 54	Bettinger, Michael	30	Bryant, Chris	24	Chopskie, Gregory	27
Bajefsky, Robert D	27	Bey, Dawn-Marie	30	Bryant, Shawn D	43	Christianson, Greg A	43
Baker, Frederick D	69	Bideman, David T	37, 43	Buck, James Lee, II	67	Christman, James N	14, 50
Baker, George D	68	Binder, Lisa A	22	Budd, Edward H	62	Clanton, David A	48-49
Baker, Kim	19	Bisbecos, Peter A	28, 31	Bump, Christine P	25	Clark, David W	44
Baker, Thomas E	62-63, 66	Bishop, Timothy S	55, 65	Bunn, William B, III	47	Clark, Ronald H	24, 27
Baldwin, Fletcher N, Jr	70	Bissell, Rolin P	38-40, 54			Clarke, Thomas H, Jr	45
Baldwin, Mark S	34	Bitol, Solange E	50			Clement, Paul D	64, 69
Bale, Harvey E, Jr	61					Clenci, John M	35
Ballabon, Jeffrey H	62						

Clifton, Catherine L	63	Davis, Sandra K	34	Ebersole, Ted J	29	Fogelm Paul D	34
Coakley, Robert E.	56	Dawkins, Michael T	24	Echikson, Thomas G	57	Fogt, Howard	30
Cochran, Emily	23	Dawson, Carl K	15	Eckman, Richard	12	Foley, Thomas J	44-45, 69
Codevilla, David A	22, 35	De Leon, Albert V	49	Edelstein, Jeffrey S	48	Fordice, Kirk	55
Coffin, Shannen W	54, 61	De Simone, Joseph	38-39	Edison, Andrew	39	Fortney, David S	21
Cohen, Roy Alan	57	De, Raj	13	Edmonds, Walter I	65	Fox, Jon D	49
Colbert, Damon D	38, 40	DeCrane, Alfred C., Jr	66	Eggleston, W Neil	67	Frank, Daniel E	22
Cole, Denise A	69	deKieffer, Donald E	61-62	Eisenhofer, Jay W	48	Frank, Richard L	16-17, 51
Cole, J Chase	39	DeMoss, Harold R., Jr	38	Eizenstat, Stuart E	12	Franze, Laura A	54
Coleman, Norm	18	den Hartog, Jeroen H J	23	Elder, Scott A	43	Franze, Laura M	21
Coleman, Terry S	27	Denning, Brannon P	68	Eldridge, William W, IV	20	Frazza, George S	66
Collodel, Douglas	33	Dennis, Sandra J P	17, 50	Ellsworth, Laura E	67	Freeman, Richard M	70
Conko, Gregory	13	Dennis, Warren L	12, 19-20, 49	Ely, Bert	12	Frey, Andrew L	66
Connolly, Michael J	10, 21, 54, 71	Dervan, Lucian E	13	Emanuel, William J	10	Fried, Bruce Merlin	60
Conour, Kenneth P	66	Destro, Robert A	51	Emord, Jonathan W	52	Friede, Arnold I	15, 17
Cook, William T	29	Detlefsen, Robert	28	Engelmaier, Christine R	54	Friedenthal, Jack H	54
Coombs, Dianne C	54	DeVore, P Cameron	51	Engler, John	13, 43	Friedlob, Raymond L	51
Cople, William J, III	63	Dezenhall, Eric	42	Englert, Roy T, Jr	10, 64	Froelich, F Edwin	71
Copus, David A	50	DiAntonio, Janet V	58	Epley, Leslie A	46	Frye, Russell S	56
Corner, Richard M	50	Diaz, Denise L	10	Epstein, Richard A	30	Fuchs, Dan	36
Cortese, Alfred W, Jr	20, 54	Dietz, Ainsley N	32	Erway, Charles E, III	57	Fuchs, Ronni E	34, 37, 42
Cox, Christopher	52	Dillon, James J	70	Erwin, James W	38	Fuhrman, Robert H	24, 56
Cox, Douglas R	19, 52	DiLorenzo, John, Jr	69	Esenberg, Richard M	61	Fulk, Austun	24
Craig, Larry E	56	Dimitref, Alex	11	Evans, David S	11, 18	Fuller, Robert E	66
Crandall, Robert W	10	Dinh, Viet D	64	Evans, George W	17	Fullerton, Larry	10
Creighton, Joseph R	48, 67	Dinkins, Carol E	14, 53				
Creutz, Evan A	39	Direnfeld, Barry B	14	F		G	
Crisham, Thomas M	61	Ditthavong, Khouane	23	Fagen, Leslie Gordon	50	Gamer, Ronald L	52
Crist, Paul LeRoy	64	Dixton, Grant M	18	Fales, Lisa Jose	16	Galda, Joseph P	67
Crocker, Thomas E	18	Dobriansky, Larisa	56	Falk, Donald	10, 32, 48, 68	Gallacher, Ian	34, 54, 63
Cross, Bruce Michael	47	Dodson, Kathleen	60	Farkas, L Peter	61	Gallagher, William T	33
Cross, Frank B	56, 58	Dolan, Michael F	71	Farmer, John B	68	Ganslaw, Lawrence S	17
Cross, James	29	Dombrowski, Leo P	56	Farry, Douglas B	35	Garber, Marc N	20
Crouse, Andrew W	46	Domenici, Pete V	67	Fastow, Jay N	48-49	Garcia, Leah Marie	45
Crovitz, L Gordon	66	Donovan, Richard E	11	Faucette, Douglas P	29	Garcia-Bokor, Amybeth	12
Crudo, Timothy P	11	Dormer, Robert A	25	Faulk, Richard O	34	Garde, Maureen E	18
Cruz-Alvarez, Frank	45	Doty, James R	67	Fawell, Harris W	60	Garre, Gregory G	49
Cubbage, Thomas L, III	22	Dow, Robert M, Jr	69	Featherstone, Donald J	29	Garrett, Theodore L	22
Cullen, Elizabeth A	71	Drobak, John N	60	Feeley, Michael Scott	59	Garrou, John L W	68
Cumbow, Robert C	51	DuBoff, Scott M	22, 58	Feeney, Carolyn H	37	Garry, Patrick M	40
Cunard, Jeffrey P	18	Dubow, Jay A	42	Feinstein, Richard A	58	Gasch, Manning, Jr	22
Cunningham, Kendall R	66	Dudley, Susan E	14	Feldman, Murray D	54	Gatto, James G	30
Cupples, Margaret		Duke, Kevin E	63	Fellner, Baruch A	71	Gaynor, Kevin A	49
Oertling	32, 43	Dukes, David E	20	Fernández, Gastón P	30, 36	Geiger, Susan B	27
Cutler, Barry J	50-51	Dunbar, Frederick C	44	Fichthorn, Norman W	23	Gellhorn, Ernest	14
		Duncan, John J	11	Fimea, Victoria E	28	Gerson, Stuart M	14, 37, 52,
		Duncan, Michael P	29, 61	Fisher, Jay	51		54, 58, 60, 66
		Dunkelberger, Edward	60, 64	Fisher, Mike	28	Gibbs, Jeffrey N	15, 25-26, 59
D		Dunlop, Karen Owen	19	Fithian, John F	50	Gibson, B Keith	42
Dantzler, J David, Jr	41	Dunne, Kevin J	48, 69	Flack, Brian L	20	Gidan, Albert	53, 58, 65
Darch, Douglas A	54	Dupree, Thomas H, Jr	37	Flam, Dan	30	Gilbert, John A, Jr.	25
Daves, Bradley J	52	Durie, Daralyn J	51	Flanagan, James	42	Gilliland, James G, Jr	30
Davis, Ada A	39			Flanery, Kara L	58	Gilmore, James S, III	18
Davis, Peter W	69	E		Flanigan, Timothy E	42	Guiffra, Robert J, Jr	53, 67
Davis, Ralph D	51	Eagle, Steven J	65	Flannigan, Timothy J	58	Guhani, Rudolph W	25
Davis, Randall E	55	East, David R	43	Floyd, Michele	34	Glaser, Peter	23-24
Davis, Robert P	70						

Glazer, David A	33, 42		H	Herr, Mitchell E	40	Jackson, J Russell	15
Glen, Alan M	57	Haig, Robert L	68	Herrmann, Mark	43	Jackson, Thomas C	20, 49, 55
Glencer, Julia M	36	Haile, Gregory A	41	Hibbert, Robert G	59	Jacobs, Blair M	29
Glover, Gregory J	27	Halko, Lisa L	45-46	Hickok, Eugene W	62	Jacobs, James B	68
Goelzer, Daniel L	41	Hall, Ralph F	15	Higginbotham, Patrick E	67	Jacobs, Ronald M	16
Goeppele, Craighton E	50	Halprin, Lawrence P	71	Hile, Norman C	70	Jacoby, Paul B	59, 64
Gold, Andrew S	14, 36	Hamlin, James B	63, 67	Hiler, Bruce A	20	Jaffari, Katayun	40
Gold, Michael A	41	Hammerman, Stephen L	49	Hills, Carla A	62	Jaffe, Seth D	68
Goldberg, Phil	46	Hammond, David C.	36	Hines, Robert L	53, 57	Jakubowics, Craig E R	24
Goldman, Cynthia L	57	Hampe, Carl W	26, 69	Hinman, John A	42, 52	James, Charles A	48
Goldsmith, Willis J	47, 70-71	Hanback, Christopher B	67	Hoeffner, Timothy	40	Jamison, Delos Cy	24
Goldsohel, Steven M	39	Hanley, Robert F	53, 65	Hoffman, Adonis	15	Janney, Christopher G	60
Goldstein, Ned S	63	Hanson, John N	58	Hoffmeister, David M	27, 67	Jauregui, Jacqueline M	21
Goldstein, Thomas	32	Hantler, Steven B	33, 43-44	Hogue, Michael W	20, 64	Jay, Dennis	61
Goldstone, David J	52	Hara, Kevin M	43	Holland, Maurice J	65, 70	Jayne, Thomas R	38
Gombar, Robert C	70-71	Haralson, Shannon L	58	Holley, Joy L	38, 69	Jerz, Lawrence R	66
Goode, Barry P	47, 57	Harding, Bertrand M, Jr.	49	Holmes, Jacqueline M	47, 70	Johnson, Barry L	68
Goodman, Lorna Bade	53	Harding, Russell J	55, 57	Holston, James M	38, 54	Johnson, Harry I, III	10
Gori, Gio Batta	38	Hardt, Scott W	57	Hong, Ehe	22	Johnson, James H	29
Gorinson, Stanley M	10, 14, 19, 48	Hardy, David T	55	Hopkins, Bruce R	49	Johnson, Steffen N	55
		Harlow, David S	14	Horgan, J Kevin	62	Johnson, Teisha C	25
Gorsuch, Neil M	39	Haroff, Kevin T	56	Horn, Charles M	12	Johnstone, James M	59
Goss, Peter J	25	Harold, Rosemary C	15-17	Hornak, Mark R	48	Jolly, Bruce O	12
Gotts, Ilene Knable	61	Harrington, Rick	49	Horning, Mark F	61	Jones, Brian W	54
Gottschalk, Thomas A	44	Harris, Joel B	13	Horvitz, Alissa A	54, 61	Jones, Donald W	70-71
Grady, Kevin E	26	Harrison, Anne R	64	Horvitz, Ellis J	37, 47, 69	Jones, Edith H	64
Graefe, Frederick H	60	Harrison, Craig S	14	Horwitz, Paul	70	Jones, Erika Z	36
Graff, George L	29, 52	Harrison, E Bruce	57	Hotchkiss, Anita	14, 66	Jordanger, Dan J	50
Grafman, Stephen W	53	Hartley, John T	62	Howard, Malcolm J	31, 64	Joyce, Sherman	44
Graham, David B	38	Hartman, Barry M	22, 42, 53, 56, 59	Howell, Danny M.	49	Judge, Clark S	14, 17
Gramm, Wendy L	14			Howell, Denise M.	18		
Grams, Rod	55	Harvey, Stephen	12	Howlett, C T ("Kip"), Jr	62		
Grant, Harry E, Jr	50	Harvey, William F	62	Huffman, James L	65	K	
Graves, Fatima Goss	32	Hatch, Orrin G	59, 62	Huffman, Robert K	58	Kahanovitz, Neil	59
Graves, Thomas J	63-64, 68, 70	Hatcher, Julia A	22	Hughes, Thomas D	28	Kahn, Kyann C	37
Gray, C Boyden	42	Haug, David M	50	Hungar, Thomas G	62	Kamann, Hans-Georg	10
Gray, Peter L	56-57	Hauke, Justin P	44	Huston, William T	58	Kamenar, Paul D	13, 19, 32, 40-41, 56, 58, 64, 67
Greenan, Thomas J	55	Haussman, Ted, Jr	47	Hutt, Peter B, II	58	Kaminsky, Alan	70
Greenberg, Maurice		Hayes, David J	21	Hyman, Douglas W	63	Kamp, John F	16-17, 51
("Hank")	44	Hayman, Russell	56			Kanwit, Stephanie W	60, 63
Greene, Cary	16	Heberlig, Brian M	42	I		Kaplan, Jeffrey M	53
Greene, John	69	Heck, Warren W	28	Immel, Melissa A	53	Kaplan, Phillip R	41
Greenwood, James C	31	Heckman, Jerome H	58	Imperato, Gabriel L	27-28, 58	Kapp, M Keith	66
Griffin, James D	34, 67	Heiderscheid, John W, III	65	Imre, Christina J	21, 33, 37	Karlin, Norman	65
Griggs, Linda L	41	Heinke, Rex S.	52	Ingber, Matthew D	39	Karst, Kurt R	25
Grill, Jeffrey B	40	Hellerman, Eric	33	Ingram, Stacy S	41	Kastenmeier, Robert W	62
Grimaldi, Ann G	45-46	Hendel, David P	36	Ireland, Thomas R	66	Kattan, Joseph	11, 48
Gritzle, Charles L	68	Henderson, John R	66	Isbister, John B	63	Kaufman, Kenneth S	22
Groscup, C William	55	Hendricks, William C, III	20, 53	Iverson, Matthew J	49, 64-65	Kaufman, Robert J	26
Guarino, Elizabeth Tom	59			Ivester, David	56	Kaufman, Robert L	49
Guglielmo, Daniel	37	Hendrickson, D John	50			Keating, Frank	54
Gunnarson, R Shawn	69	Henn, R Charles, Jr	61	J		Keeton, Charles R	34, 63
Gutiérrez, Nicolas J, Jr	70	Henmigan, Brian J	53	Jackman, Peter A	29	Keffer, Bill	63
Guzman, Michael J	54	Henry, Steven D	20	Jackson, Christine P	17	Kelly, Alice A	38
		Herath, Kirk M	57, 61	Jackson, Darryl W	53	Kelly, Brian S	18
		Herman, Lawrence R	53	Jackson, J Andrew	24, 36, 58	Kelly, Michael S	48

Kelly, Thomas J , Jr	14	Lacovara, Philip Allen	42	Lungren, Daniel E.	48, 54	McDermott, Renée R	50
Kelly, William E	31	Lake, Monte B	61	Luxton, Jane C .	23	McGee, Robert W	63, 68
Kennedy, Charles M	53	Lamm, Glenn G	15, 26-27, 30, 33-34, 40, 44, 46, 48, 50- 51, 58-60, 62-63, 65-66, 68-70	Lytton, William B	49	McGivern, William T , Jr	54
Kent, Felix H	50	Langworthy, Lucinda		Lytz, Karl S	55	McGlone, William M	62
Kernigan, Karen	21	Minton	23	M			
Kershen, Drew L	13	Lanza, Robert J	54	MacLeod, William C	17, 50, 59	McGoldrick, John L	38
Kett, Amy Folsom	52	Larkin, William A	60	Madden, Thomas J	36	McGuckin, John H , Jr	34
Key, Sarah A	25	Lash, William H , III	17, 31, 57, 62, 66	Magazine, Alan H	59	McInay, Bruce A	68
Keyko, David G	62	Lasker, Eric G	12, 35-36	Mahar, William F	68	McIntosh, David M	12, 57
Kichline, Michael L	41	Latimer, Hugh	51, 60	Mahinka, Stephen Paul	26	McKenna, F Gregory	64
Kilberg, William J	21, 60	Latta, Forrest S	66, 69	Mahoney, Maureen E	54	McKenna, Rob	18
Kilduff, Jeffrey W	40	Latimore, Rachel G	13	Mai, Mark F	63	McLain, Patrick	33, 44
Killion, Mark S	69	Lauro, Lino J	59	Makris, Francis	27	McLaughlin, Peter F	62
Kingham, Richard F	26	Lawson, Richard L	56	Mallen, Ronald E	61	McManus, Robert J	57, 64
Kinnaard, Stephen B	33	Leake, Nolan C .	66	Mallory, Brenda	56	McNamara, Anne H	66
Kinzelman, Greg	48	Leavitt, Michael O	57, 59	Maloney, James	39	McPherson, David J.	49
Kirby, Richard A	32	Ledig, Robert H	12	Maloney, James Edward	38	McSwain, William M	41
Kirsch, Edward W	58	Lee, Judith A	31	Maltby, Lewis	31	McTamaney, Robert A	
Kirschner, Philip	70	Lee, Michael Q .	29	Manishin, Glenn B	52		10-11,41
Kirshner, Robert	57	Leggette, L Poe	22	Mannina, George J , Jr	23, 56-57, 68	Meade, James A	50
Kitzhaber, John A	57	Lehman, James K	20	Manning, Richard L	17	Means, Deborah G	69
Klaffer, Bruce S	70	Lehotsky, Steven	10	Mansour, Mark	12-13	Mehan, G Tracy, III	55
Klein, Marc S	67	Leitch, David G	66	Marchant, Gary E	31	Meindertmsa, Donn C	68
Klinger, Shannon Thyme	42	Lemker, John F	59	Marcus, Bernard	44	Menaker, Frank H , Jr	53
Klubes, Benjamin B	49	Lemmer, Thomas A	58	Margie, R Paul, Jr	48	Mendelson, Richard	51
Knollenberg, Joe	55, 61	Lenihan, William F	55	Margulies, Jeffrey B	46, 70	Menton, Francis J , Jr	67
Knopp, Gregory W	54	Lennie, Brad	30	Marino, Daniel	53, 60	Merram, Dwight H	65
Koblenz, Andrew D	63	Lennzner, Terry F	39	Markham, Jesse W , Jr	48	Merrill, Richard A	59
Kogan, Lawrence A	31	Leonard, John T	28	Marks, David	10	Merritt, Bob	39
Kolasky, William	10	Lerner, Jonathan J	67	Markham, David	10	Mesnard, James M	53
Kotler, David A	40-41	Leskovsek, Andreas	58	Martel, Jonathan S	57	Millan, Stanley A	58
Kotz, H David	56	Levick, Richard S	32	Martin, Denise Neumann	44	Miller, George W	65
Kowal, Stephen M	49	Levin, Michael H	57	Martin, James C	34, 45	Miller, Henry I	13, 26, 49
Kowal, Steven M	13, 19, 59	Levine, Arthur N	67	Martineau, Robert J , Jr	23	Miller, James D	66
Krabill, Laura E	42	Levy, Robert A	50	Martosko, David	26	Miller, James Dabney	
Kracov, Daniel A	50, 59	Lian, Robert G , Jr	70	Maskin, Arvin	66		19, 26, 35, 37
Kradin, Adam E	29	Liao, Gabriel	37	Massey, Jonathan S	18	Miller, Jessica Davidson	44
Krantz, Sheldon	60	Liebesman, Lawrence R	21, 56	Matey, Paul B	39	Miller, Kerry J	13
Krashin, Michael L	29	Lignier, Sophie	30	Mather, Graham	31	Miller, Paul S	66
Krauss, Michael I	33, 43, 45	Liljestrand, Craig T	45	Mathews, Kristen J	18	Millikin, Michael P	53
Kraw, George M	34-35	Lipton, Jack P	53	Mathias, William T	26	Mills, John C	66, 69
Kreye, George D	51, 67	Lisker, Marc R	65	Maupin, Armistead J	66	Mincberg, Elliot M	51
Krill, John P	22	Little, Andrew G	64	Maxwell, Rosemary	16, 26-27	Minear, Nicholas R	60
Kris, Jody Manier	15	Livingston, Gene	36, 46, 70	Mayer, Lloyd H	13	Mintel, Judith	33
Krishnakumar, Anita S	42	Locke, R Christopher	53	McAndrew, Mark A	15	Mirel, Lawrence H	28-29
Krueger, Christopher E	70	Lombard, Richard S	56	McCall, Jack H , Jr	68	Moellenberg, Charles H , Jr	
Krug, Edward C	58	Lorber, Lawrence Z	54	McCalmon, Brian K	27		32-33
Krulwich, Andrew S	26	Lorber, Leah	36, 43-45, 69	McCarthy, Andrew C	34-35	Moeller, Elizabeth Vella	17
Kruse, Layne E	56	Lorman, Alvin J	12	McCarthy, Patrick K	64	Moffat, Philip	23
Kuehn, Kristopher A	34	Lough, Donald J	34	McCarty, Mark A	20	Molpus, C Manly	59
Kuntz, Richard M	56, 68	Lovitky, Jeffrey A	64	McClain, Beth C	24	Mondino, Jennifer	40
Kushner, Gary Jay	60	Ludwig, Steven R	29	McClure, Daniel M	58	Montgomery, Henry C	41
				Luik, John C	15-16, 25, 42	Montoya, Velma	70
L						Moody, Donald R	39
Laband, David N	45			McConnell, Michael W	53	Moore, John Norton	35
Lacovara, Philip A	35, 66-67			McConnell, Ryan D	38	Moran, Mark M	71
				McCormick, Kimberly M	55		

Moran, Robert D . . .	71	Onsdorff, Keith A . . .	53	Polsby, Daniel D . . .	52	Richmond, James G . . .	53
Morrisette, Peter M . . .	21, 24	Oostdyk, Scott C . . .	52	Popeo, Daniel J . . .	11, 33, 52, 55-56, 59, 61, 63, 66, 68	Rickerson, Stuart E . . .	50
Morrison, Jaci . . .	23	Orava, Stephen J . . .	62	Popov, Anna R . . .	32	Rigby, Robert E., Jr. . . .	61
Morrison, Stephen G . . .	64	Orland, Leonard . . .	11	Porter, David J . . .	30	Rill, James F . . .	27
Morrow, Beth E . . .	60	Orr, Dennis P . . .	40	Powers, John G . . .	36	Rivkin, David B., Jr . . .	35, 42, 60
Moscarno, George J . . .	53	Owen, Deborah . . .	48, 50	Powers, Tiffany L . . .	15	Roberts, Lauren . . .	25
Mossinghoff, Gerald J . . .	29-30, 61	Owen, Robert R . . .	63	Prechtel-Kluskens, Claire . . .	66	Roberts, Lyle . . .	39-40
Motter, Miranda Creviston . . .	43, 46	Oyler, Jason E . . .	22	Presser, Stephen B . . .	50, 63, 67	Roberts, Norman L . . .	53
				Prestu, Diane C . . .	66	Roberts, Robert E . . .	23
		P		Preuss, Charles F . . .	66	Robinson, Connie . . .	10, 19
Motzenbecker, Douglas E . . .	34, 39	Packard, David . . .	62	Price, David . . .	16, 25-27, 32-33, 46	Rockefeller, John D., IV . . .	60, 69
Moyer, Homer E., Jr . . .	31, 62	Page, Abigail . . .	14	Price, David Andrew . . .	58, 62, 68	Rockett, James M . . .	12
Muench, John E . . .	69	Pahl, Tish E . . .	15	Priebe, David . . .	40-41	Rogers, Martha P . . .	60
Murashige, Kate H . . .	61	Pahl, Tish Eggeston . . .	16-17	Priest, George L . . .	11	Rolander, Laura . . .	71
Muris, Timothy J . . .	16, 52	Palmer, Fredrick D . . .	24	Pritikin, Nancy E . . .	63	Rose, Lewis . . .	52
Murmane, Edward D . . .	43	Pambianco, Robert . . .	10	Provorny, Frederick A . . .	59, 64	Rosen, Charlotte . . .	
Murphy, Joseph E . . .	49-50, 65	Pambianco, Robert V . . .	10, 14, 32, 34, 63, 67	Pryor, Bill . . .	45, 53	Rothenberg . . .	36
Murphy, Paul B . . .	13	Pape, Stuart M . . .	59	Pryor, William H., Jr . . .	46	Rosenbaum, Steven J . . .	59
Murphy, Paul N . . .	58	Parasharami, Archis A . . .	10	Pulham, Mark S . . .	61	Rosenberg, Daniel L . . .	64
Murray, Allen E . . .	66	Parker, Robert P . . .	49, 61-62			Rosenberg, Florence . . .	65
Murray, John S . . .	62	Parr, Ross H . . .	41			Rosenberg, Irving D . . .	65
Museles, Scott D . . .	41	Parsigian, Kenneth J . . .	34			Rosman, Adam L . . .	19
		Partridge, Scott S . . .	13	Q		Ross, Douglas C . . .	55
		Passell, Peter . . .	10	Quigley, David H . . .	56	Ross, Gilbert L . . .	23, 25
		Pataki, George E . . .	70			Ross, Sarah J . . .	59
		Patton, Thomas Earl . . .	64	R		Rossbacher, Henry H . . .	57
		Patton-Hulce, Vicki R . . .	67-68	Rademacher, John J . . .	56	Rosso, David J . . .	47
		Paul, Robert D. . . .	48	Rader, Randall R . . .	65	Roth, Jerome C . . .	53
		Paulson, Mark G . . .	23	Railton, W Scott . . .	70-71	Roth, Theodore D . . .	67
		Pauw, Jan . . .	55	Raphaelson, Ira H . . .	20, 53	Rotunda, Ronald D . . .	15, 62
		Pauzé, Michael R . . .	20	Rapoport, Frank M . . .	35	Rowland, J Roy . . .	65
		Pearlman, Jeff . . .	28	Rasmussen, Garret G . . .	27	Rownd, David M . . .	64
		Pearson, Durk . . .	51	Raul, Alan Charles . . .	14, 38, 66	Rubin, Lee H . . .	19
		Pease, Gregory J . . .	39	Ray, Brian . . .	43	Rucker, Craig . . .	67
		Peck, Jeffrey J . . .	62	Rayel, Will . . .	18	Rudlin, D Alan . . .	22
		Peck, Robert S . . .	51-52	Read, Gregory C . . .	34	Rudnick, Lewis G . . .	60
		Pemberton, John L . . .	66	Reber, W Matthew . . .	63	Ruhl, J B . . .	55
		Perez, Antonio F . . .	11	Reddick, David . . .	29	Rutenberg, Alan D . . .	61
		Perkins, Nancy L . . .	49, 61	Redgrave, Jonathan M . . .	20	Rutner, Jack . . .	18
		Perlman, Scott P . . .	30	Redick, Thomas P . . .	12-13, 45	Ryan, Mark W . . .	63
		Perrochet, Lisa . . .	48	Redish, Martin H . . .	50	Ryan, Patrick W . . .	55
		Perry, Lynne A . . .	56	Redmond, Charles E., II . . .	32	Ryan, Russell G . . .	40
		Peters, Manlyn A . . .	55	Reed, Adam B . . .	66		
		Petersen, Rafe . . .	21, 56	Reed, Michael P . . .	39	S	
		Pettit, David . . .	22-23	Reed, Richard C . . .	63	Sabet-Payman, Kouroush . . .	43
		Petty, Regina A . . .	66	Reid, Sarah L . . .	39	Sacks, Luanne . . .	34
		Phelps, James R . . .	25, 59	Reifschneider, Laura M . . .	13	Sacopulos, Michael . . .	44
		Phillips, Carter G . . .	64	Reig, Linda Pissott . . .	66	Sager, Kelli L . . .	52
		Pilot, Larry R . . .	26	Rein, Bert W . . .	17, 63, 66	Salcido, Robert . . .	25, 27
		Pines, Wayne L . . .	27	Renfrew, Charles B . . .	62	Salem, George R . . .	70
		Pinto, Consuela A . . .	21	Renk, Christopher J . . .	29	Salibra, Lawrence A., II . . .	31-33, 49, 62
		Pizzi, Peter J . . .	68	Reynolds, John B., III . . .	18	Salky, Steven M . . .	19
		Plevin, Mark D . . .	46	Reynolds, Paul . . .	40	Samp, Richard A . . .	16-17, 21, 25-28, 37, 50-53, 59, 63, 68
		Pociask, Steve . . .	18	Ribstein, Larry E . . .	17, 39, 41, 48, 62	Sanchez, Ignacio . . .	37
		Pollock, Alex J. . . .	38	Richardson, Brandi A . . .	45		

Sanda, Kris	55	Shaw, Sandy	51	Sporkin, Stanley	53	Tanenbaum, Jeffrey M	21, 47, 70
Sandner, Kimberly D	44	Shebel, Jon L	69	Sprengle, Jason	20	Tangri, Ragesh K	51
Sandquist, Ronda L	58	Shelby, Richard	38	Stadler, John S	33, 45-47	Tangri, Shiraz D	22
Santoro, Frank H	70	Shelby, Richard C	55	Starr, Judson W	20	Taube, Tad	65
Santorum, Rick	69	Shelton, R Walton	56	Starr, Kenneth W	62	Tauzin, Billy	65
Santos, Leonard E	62	Shepherd, Frank A	62	Stauffer, Robert R	53	Taylor, Karen L	71
Sanzo, Kathleen M	17, 26	Shere, Mark E	50	Stegemann, Traci J	71	Taylor, Mark D	45-46, 69
Sapper, Arthur G	14, 47, 70-71	Sherman, Jonathan	62	Stegmaier, Gerard	40	Taylor, Sarah E	59
Sarles, Jeffrey W	55, 65	Shupack, Richard A	67	Stein, David A	62	Techemum, Jeffrey	12
Sarner, Eric S	15-16	Shuster, Michael J	30	Stein, Laura	13, 30	Tedesco, Rochelle M	11, 32, 34
Savell, Lawrence	48	Sidak, Melinda L	60	Steinway, Daniel M	49	Teichler, Stephen L	50, 60
Savit, Mark N	70	Siegan, Bernard H	51	Stemmer, Andrew I	13	Temchine, Daly D E	27, 60
Sawtelle, Susan D	68	Silberman, Alan H	60	Stenberg, Don	21, 23, 42, 44	Teplitzky, Sanford V	26, 58, 60
Scalia, Eugene	70	Silver, Samuel W	36, 46	Stenholm, Charles W	55	Teroaka, Jill Cooper	14, 22, 43
Schachtman, Nathan A	46	Silverman, Cary	32, 37, 43	Stephens, Jay B	50	Terwilliger, George J, III	53, 57
Schaerf, Carl J	64	Silverman, Nancy	60	Stephens, Richard M	65	Teufel, Hugo, III	58, 64
Schalestock, Peter	52	Simon, Robyn B	61	Stern, Michael L	63	Thau, Clifford	40
Scharman, Clifford J	10, 21, 54, 71	Sims, Joe	11	Stern, Robert M	40	Thomas, John R	65
Schauer, Tiffany M	57	Sims, Robert E	52	Stern, William L	10, 48	Thompson, Bradley Merrill	
Schemdlin, Shura A	20	Sinclair, William	42	Stevens, Gary G	21		26, 60
Schemeson, Marc J	26, 30, 59	Sipes, Christopher	11	Stevens, Richard W	64	Thompson, Larry D	53
Schenkkan, Pete	43	Singnano, David A	41	Stevens, Ted	49	Thompson, P Robert	65
Scher, Howard	31	Skitol, Robert A	48	Stewart, Bruce R	48, 60	Thomson, Roger F	60
Scher, Irving	48	Sklaire, Michael R	19, 39	Stuentjes, Michael J	56	Thornburgh, Dick	13, 15, 25, 33, 36, 43-44
Scher, Peter	10	Slaughter, Alex	67	Sullman, Nina G	71	Thornburgh, Richard	20, 35, 49, 58, 62, 66
Schley, Wayne A	49	Slavin, Thomas J	47	Stock, Margaret D	35	Thunder, James M	56-57, 68
Schmitz, Joseph E	60, 69	Slavitt, Evan	56, 58	Stoll, Richard G	14, 24	Thurston, Laurel	37
Schneider, Janice M	21	Slavitt, Kelly M	30	Stoller, Kenneth A	28	Tierney, Thomas W	66
Scholes, Steven S	40	Slear, James D	31	Stone, Elhanan C	48	Tiller, Jennifer L	65
Schonbrun, Lawrence W	63	Sloane, Adam C	36	Stratton, Harold D (Hal)	36	Todd, James S	67
Schraub, J Jonathan	49	Slobodin, Alan M	26, 48, 51-52, 56, 59	Strine, Leo E, Jr	39	Torpey, Michael D	67
Schuler, Galen G	54-55	Smith, David B	65	Stroman, Cynthia A M	57	Torregrossa, Brennan J	32
Schultz, Gregg T	55	Smith, Frederck T	38, 63-66, 69	Stromberg, G Thomas, Jr	32	Towle, Holly K	18, 32-33
Schwab, Arthur J	30	Smith, Lamar	44	Stroup, Richard L	56	Tozzi, Jim J	14
Schwartz, Robert A	48	Smith, Larry	32	Stuckemeyer, John D	62	Traiger, Warren W	48
Schwartz, Victor E	11, 32-34, 37, 40-41, 43-45, 65-66, 69	Smith, Mark W	52, 67, 69	Sulds, Jonathan L	54	Tramosch, Albert	30
Scott, Hal S	12	Smith, Nick	13, 52	Sullivan, John	41	Troy, Daniel E	49, 51-52
Scroggin, Don G	56	Smith, Stephen F	59, 66	Sullivan, John H	66	Troy, Mark R	58
Scully, John C	56, 63	Smith, Stuart	22	Sullivan, John J	64	Truskey, Jeffrey J	55
Searcy, Chip	36	Smith, Thomas M	32	Sullivan, Sean	60	Tucker, James B	19
Segal, Donald E	25	Smith, Thomas M	32	Sullivan, Timothy	36	Tuller, S Mark	65
Segal, Jeffrey	44	Snodgrass, Sandra	21	Summers, Elyse I	49	Tully, W Bradley	60
Seib, Karl E, Jr	69	Snyder, David F	28	Sumner, Anna Aven	43	Tunnell, Kurt	45
Seifried, Kent W	70	Sokenu, Claudius O	31, 40-41	Sumner, Bret A	22	Tunnell, Kurtis A	43, 46
Sellinger, David E	54	Sokolove, Robert	65	Susser, Peter A	70-71	Turley, Jonathan	22
Sepucha, Robert C, Jr	67	Solberg, Monte	27	Sussman, Robert M	22	Turner, Stephen M	66
Sferra, Anne Marie	45	Sollers, J Sedwick, III	53	Swedloff, Rick	40	Tushnet, Rebecca	18
Shaffer, Jason N	71	Sorini, Marc E	16, 50	Sweeney, Harry A, Jr	59	Tweedie, Elizabeth E	56
Shaheen, Randal M	16	Soya, Stanley	60	Sweeney, James F	67	Tyrie, James P	70
Shaheen, Randal M	16	Spears, James M	27-28	Swenson, Lily Fu	30		
Shapiro, Mitchell S	60	Spehr, Richard A	39, 41				
Shapiro, Nell Kilburn	50, 69	Spencer, Elaine L	65	T			
Sharp, Benjamin S	67	Spiegel, Daniel L	13	Taber, Kelley M	56	U	
Shaw, Beth Z	29	Spinelli, Robert N	63	Taebel, Scott W	60	Ullman, Marc S	70
Shaw, Nancy A	48	Spiro, Peter J	61	Tager, Evan M	66	Updegrove, Andrew	62
				Tambe, Jayant W	20	Utt, Ronald D	67

Washington Legal Foundation

Order Form

Ship to _____
 Address _____
 City _____ State _____ Zip _____

Prices:
 Monograph \$10 Contemporary Legal Notes \$7 Legal Backgrounder \$5 Legal Opinion Letter \$3
 Conversations With \$8 Working Paper \$7 Counsel's Advisory \$3

Title	Price	Qty.	Total
Grand Total			

Mail to Publications Department, Washington Legal Foundation, 2009 Massachusetts Avenue, N W, 20036 Phone (202) 588-0302

Washington Legal Foundation

The Washington Legal Foundation was established in 1977 as a nonpartisan, nonprofit public interest law institution organized to engage in litigation and the administrative process in matters affecting the broad public interest. An independent nationwide corporation not associated or affiliated with any other organization, WLF devotes a substantial portion of its resources to promoting our viewpoint on economic growth and job creation, the civil liberties of business, strong international competitiveness, and the legal policies that foster such goals.

The Foundation is classified as a Section 501(c)(3) organization under the Internal Revenue Code of 1954. Individuals, corporations, companies, associations, and foundations are eligible to support the work of the Foundation through tax-deductible gifts. The Foundation neither solicits nor accepts government funding or taxpayers' fees for its operation.

WLF's Legal Studies Division is dedicated to expanding the free enterprise legal idea base. It does this by conducting original research and writing; delivering a broad selection of publications to business leaders, reporters, academics, and government officials; and briefing the media and other audiences through live and webcast briefings and seminars.

To receive information about previous Washington Legal Foundation publications, contact Glenn G. Lammi, Chief Counsel, Legal Studies Division. Materials concerning WLF's other legal programs and activities may be obtained by contacting Daniel J. Popeo, Chairman, Washington Legal Foundation, 2009 Massachusetts Avenue, N.W., Washington, D.C. 20046. Phone: (202) 588-0302.

WLF's most recent publications are available on LEXIS/NEXIS® and at www.wlf.org.

Application for Extension of Time To File an Exempt Organization Return

Department of the Treasury
Internal Revenue Service

► File a separate application for each return

- If you are filing for an **Automatic 3-Month Extension**, complete only **Part I** and check this box **X**
 - If you are filing for an **Additional (not automatic) 3-Month Extension**, complete only **Part II** (on page 2 of this form).
- Do not complete Part II unless you have already been granted an automatic 3-month extension on a previously filed Form 8868.**

Part I Automatic 3-Month Extension of Time. Only submit original (no copies needed).

Section 501(c) corporations required to file Form 990-T and requesting an automatic 6-month extension - check this box and complete Part I only

All other corporations (including 1120-C filers), partnerships, REMICs, and trusts must use Form 7004 to request an extension of time to file income tax returns.

Electronic Filing (e-file). Generally, you can electronically file Form 8868 if you want a 3-month automatic extension of time to file one of the returns noted below (6 months for section 501(c) corporations required to file Form 990-T). However, you cannot file Form 8868 electronically if (1) you want the additional (not automatic) 3-month extension or (2) you file Forms 990-BL, 6069, or 8870, group returns, or a composite or consolidated Form 990-T. Instead, you must submit the fully completed and signed page 2 (Part II) of Form 8868. For more details on the electronic filing of this form, visit www.irs.gov/efile and click on *e-file for Charities & Nonprofits*.

Type or print <small>File by the due date for filing your return See instructions</small>	Name of Exempt Organization WASHINGTON LEGAL FOUNDATION	Employer identification number 52-1071570
	Number, street, and room or suite no If a P O box, see instructions 2009 MASSACHUSETTS AVE., N.W.	
	City, town or post office, state, and ZIP code For a foreign address, see instructions WASHINGTON, DC 20036	

Check type of return to be filed (file a separate application for each return):

- | | | |
|--|---|------------------------------------|
| <input checked="" type="checkbox"/> Form 990 | <input type="checkbox"/> Form 990-T (corporation) | <input type="checkbox"/> Form 4720 |
| <input type="checkbox"/> Form 990-BL | <input type="checkbox"/> Form 990-T (sec. 401(a) or 408(a) trust) | <input type="checkbox"/> Form 5227 |
| <input type="checkbox"/> Form 990-EZ | <input type="checkbox"/> Form 990-T (trust other than above) | <input type="checkbox"/> Form 6069 |
| <input type="checkbox"/> Form 990-PF | <input type="checkbox"/> Form 1041-A | <input type="checkbox"/> Form 8870 |

• The books are in the care of ► CONSTANCE C. LARCHER

Telephone No. ► 202 588-0302 FAX No ► _____

- If the organization does not have an office or place of business in the United States, check this box
- If this is for a Group Return, enter the organization's four digit Group Exemption Number (GEN) _____ If this is for the whole group, check this box . If it is for part of the group, check this box and attach a list with the names and EINs of all members the extension will cover

1 I request an automatic 3-month (6 months for a section 501(c) corporation required to file Form 990-T) extension of time until 08/15, 2007, to file the exempt organization return for the organization named above. The extension is for the organization's return for:

- calendar year 2006 or
- tax year beginning _____, _____, and ending _____, _____.

2 If this tax year is for less than 12 months, check reason: Initial return Final return Change in accounting period

3a If this application is for Form 990-BL, 990-PF, 990-T, 4720, or 6069, enter the tentative tax, less any nonrefundable credits. See instructions.	3a	\$	NONE
b If this application is for Form 990-PF or 990-T, enter any refundable credits and estimated tax payments made Include any prior year overpayment allowed as a credit.	3b	\$	NONE
c Balance Due. Subtract line 3b from line 3a. Include your payment with this form, or, if required, deposit with FTD coupon or, if required, by using EFTPS (Electronic Federal Tax Payment System) See instructions.	3c	\$	NONE

Caution. If you are going to make an electronic fund withdrawal with this Form 8868, see Form 8453-EO and Form 8879-EO for payment instructions

For Privacy Act and Paperwork Reduction Act Notice, see Instructions.

- If you are filing for an **Additional (not automatic) 3-Month Extension**, complete only Part II and check this box. **X**
- Note.** Only complete Part II if you have already been granted an automatic 3-month extension on a previously filed Form 8868
- If you are filing for an **Automatic 3-Month Extension**, complete only Part I (on page 1).

Part II Additional (not automatic) 3-Month Extension of Time. You must file original and one copy.

Type or print File by the extended due date for filing the return See instructions	Name of Exempt Organization WASHINGTON LEGAL FOUNDATION	Employer identification number 52-1071570
	Number, street, and room or suite no If a P O box, see instructions 2009 MASSACHUSETTS AVE., N.W.	For IRS use only
	City, town or post office, state, and ZIP code For a foreign address, see instructions WASHINGTON, DC 20036	

Check type of return to be filed (File a separate application for each return).

<input checked="" type="checkbox"/> Form 990	<input type="checkbox"/> Form 990-PF	<input type="checkbox"/> Form 1041-A	<input type="checkbox"/> Form 6069
<input type="checkbox"/> Form 990-BL	<input type="checkbox"/> Form 990-T (sec 401(a) or 408(a) trust)	<input type="checkbox"/> Form 4720	<input type="checkbox"/> Form 8870
<input type="checkbox"/> Form 990-EZ	<input type="checkbox"/> Form 990-T (trust other than above)	<input type="checkbox"/> Form 5227	

STOP! Do not complete Part II if you were not already granted an automatic 3-month extension on a previously filed Form 8868.

- The books are in the care of **▶ CONSTANCE C. LARCHER**
Telephone No **▶ 202 588-0302** FAX No. **▶**
- If the organization does not have an office or place of business in the United States, check this box.
- If this is for a Group Return, enter the organization's four digit Group Exemption Number (GEN) _____ . If this is for the whole group, check this box If it is for part of the group, check this box and attach a list with the names and EINs of all members the extension is for

- 4 I request an additional 3-month extension of time until **11/15, 20 07**
- 5 For calendar year **2006**, or other tax year beginning _____, 20____ and ending _____, 20____.
- 6 If this tax year is for less than 12 months, check reason: Initial return Final return Change in accounting period
- 7 State in detail why you need the extension _____

ADDITIONAL TIME IS REQUIRED TO ASSEMBLE THE INFORMATION IN ORDER TO FILE A COMPLETE AND ACCURATE RETURN.

8a If this application is for Form 990-BL, 990-PF, 990-T, 4720, or 6069, enter the tentative tax, less any nonrefundable credits. See instructions.	8a \$	NONE
b If this application is for Form 990-PF, 990-T, 4720, or 6069, enter any refundable credits and estimated tax payments made. Include any prior year overpayment allowed as a credit and any amount paid previously with Form 8868	8b \$	NONE
c Balance Due. Subtract line 8b from line 8a. Include your payment with this form, or, if required, deposit with FTD coupon or, if required, by using EFTPS (Electronic Federal Tax Payment System) See instructions.	8c \$	NONE

Signature and Verification

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete, and that I am authorized to prepare this form

Signature **▶ [Signature]** Title **▶ Cpa** Date **▶ 8/13/07**

Notice to Applicant. (To Be Completed by the IRS)

- We have approved this application. Please attach this form to the organization's return
- We have not approved this application. However, we have granted a 10-day grace period from the later of the date shown below or the due date of the organization's return (including any prior extensions). This grace period is considered to be a valid extension of time for elections otherwise required to be made on a timely return. Please attach this form to the organization's return
- We have not approved this application. After considering the reasons stated in item 7, we cannot grant your request for an extension of time to file. We are not granting a 10-day grace period
- We cannot consider this application because it was filed after the extended due date of the return for which an extension was requested
- Other _____

Director _____ By _____ Date _____

Alternate Mailing Address. Enter the address if you want the copy of this application for an additional 3-month extension returned to an address different than the one entered above.

Type or print	Name BOND BEEBE
	Number and street (include suite, room, or apt. no.) or a P.O. box number 4600 EAST-WEST HIGHWAY SUITE 900
	City or town, province or state, and country (including postal or ZIP code) BETHESDA, MD 20814-3423