LOUISIANA ASSOCIATION OF DEFENSE COUNSEL

LOUISIANA ASSOCIATION OF DEFENSE COUNSEL NEWSLETTER

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8982 Darby Avenue
Baton Rouge, LA 70806
225-928-7599 Fax: 225-928-7339
E-mail: ladefensecounsel@aol.com
Website: www.ladc.org

UPCOMING MEETINGS

Dec. 11, 2015	**Defense Lawyers Seminar, The Roosevelt Hotel, New Orleans**	**7.0*#**
Jan. 27-30, 2016	**2016 Winter Meeting with TADC, Hotel Madeline, Telluride, CO (save the date – reg. not open)**	**TBA**

* - includes one credit for professional responsibility (ethics)
# - includes one credit for professionalism

BULLETIN BOARD

YOUNG LAWYERS SEMINARS: The young lawyers seminar series continues with CLE seminars focusing on pretrial preparation and skills. The final seminar will be on Friday, Dec. 11 as a sidetrack to the LADC Defense Lawyers Seminar at the Roosevelt Hotel in New Orleans. Please watch for email updates and register at the LADC website when registration opens.

DECEMBER DEFENSE LAWYERS' SEMINAR: The LADC's most popular seminar will be held this year at the Roosevelt Hotel on Friday, Dec. 11. As in the past, the seminar will be held in conjunction with the Louisiana Judicial College's Torts Seminar. This year, the LADC and Judicial College will have more joint sessions because of the space available at the Roosevelt. Judge Guy Holdridge and a panel will discuss changes in summary judgment practice as a result of the substantial amendment of Code Civ. Pro. Art. 966, which becomes effective Jan. 1, 2016. Judge Holdridge chaired the Law Institute subcommittee that drafted the changes. Speakers on Torts topics will include Alston Johnson, Tom Galligan, and John Church. Registration is now open on the LADC website.

2016 WINTER MEETING AND SKI TRIP: The LADC will travel to the beautiful Madeline Hotel and Residences in Telluride, Colorado to have a joint seminar with the Texas Association of Defense Counsel (TADC) Jan. 27-30, 2016. It has been too long since we had a meeting with our friends from Texas. Network with the TADC members and enjoy high quality CLE in a beautiful mountain village. Watch your email for a notice about registration opening.

INAUGURAL LADC AWARDS: At an LADC Board and Young Lawyers Dinner on Aug. 27 at the Hotel Monteleone, the inaugural Frank L. Maraist and Young Lawyers Committee Member of the Year Awards were presented. Mary Jo Roberts (Phelps Dunbar) was the recipient of the Frank L. Maraist Award, and Valerie E. Fontenot (Mickey S. deLaup Law Firm) was recipient of the Young Lawyers Committee Member of the Year Award. Recognized as finalists for the Frank L. Maraist Award were Laura Beth "L.B." Graham (Gold, Weems, Bruser, Sues & Rundell), Thomas "Tommy"

M. Hayes IV (Hayes, Harkey, Smith & Cascio), Courtney Nicholson (Entergy Services, Inc.), Erin B. Sayes (Taylor Porter Brooks & Phillips), and Scott L. Sternberg (Baldwin Haspel Burke & Mayer).

LADC PRACTICE GROUPS: Join one or more of the LADC's new practice groups at http://www.ladc.org/practice-groups. Our first three practice groups are Medical Malpractice, Employment Law, and Construction and Commercial Law. Each group presented a CLE segment at the 2015 Sizzlin' Summer Seminar on Aug. 28. Join practice groups so that you can become involved in planning and participating in the groups' activities.

TEMPORARY CHANGES IN LADC STAFF: Prof. Dane Ciolino, who has served as Associate Executive Director of the LADC since 2009, will begin serving as Acting Executive Director on Sept. 1. Kimberly Zibilich, who has been the LADC's Trip and Seminar Consultant for a year and a half, will assume some additional administrative duties during that time. Becky Bourgeois and Sara O'Bryon continue in their respective roles as Administrative Assistant and Website and Social Media Consultant. Bill Corbett, who has served as Executive Director since 2000, will assume a role as program consultant while he serves as interim co-dean at the LSU Law Center.

QUESTIONS REGARDING SEMINARS OR TRIPS: We are working with Kimberly Zibilich at Event Resources New Orleans: Telephone 504-208-5510; email Kimberly@eventresourcesnola.com.

DRI Annual Meeting: The meeting will be held in Washington, D.C. Oct. 7-11. Visit the DRI website for more information and registration: http://www.dri.org/

NEW MEMBERS

Georgia Ainsworth, New Orleans
Ashley Edwards, New Orleans
John Getty, Mandeville
Philip Lorio, Metairie
Dustin Poche, Metairie
Stacey Smith, Shreveport
Scott Sternberg, New Orleans
B. Marianne Wise, Metairie

CHOICE OF LAW

Under Louisiana law, it is generally acceptable for contracting parties to make a choice of state law that will govern the agreement between them. That choice will be given effect, except to the extent that law contravenes the public policy of the state whose law would otherwise be applicable under La. C.C. art. 3537. La. C.C. art. 3540. Over the years, Louisiana has had a strong public policy disfavoring non-competition agreements between employers and employees. SWAT 24 Shreveport Bossier, Inc. v. Bond, 00-1695 (La. 6/29/01), 808 So. 2d 294, 298. This

public policy is expressed in La. R.S. 23:921, which prohibits choice of law clauses in employees' employment contracts or agreements that purport to restrain a Louisiana citizen from earning a living in Louisiana. Thus, the validity of a noncompete clause in relation to an exclusive distributor agreement is governed by Louisiana law, not Pennsylvania law. O'Hara v. Globus Medical, Inc and Vortex Spine, LLC, 14-1436 (La. Ct. App. 1 Cir. 8/12/15), found at http://www.la-fcca.org/opiniongrid/opinionpdf/2014%20CW%201436%20R%20Decision%20Writ.pdf

CIVIL PROCEDURE

Where the plaintiff alleged the tortious conduct of defendant caused her injuries, but the petition specifically alleged negligence and did not mention the word "intentional," the plaintiff is not precluded from recovery under a theory of intentional tort because she is entitled to any relief under the pleadings and the evidence so long as the facts constituting the claim are alleged. Here, the fact the petition alleged the defendant rammed plaintiff's car three times lends itself to proving intent and clearly placed defendant on notice to defend against an intentional tort. Zimmerman v. Progressive Security Ins. Co., 49,983 (La. Ct. App. 2 Cir. 8/12/15), found at www.la2nd.org/archives/docs/28f57c.pdf

Plaintiff filed a motion to appeal the trial court's grant of a new trial, which is an interlocutory judgment not subject to immediate appeal. While a court of appeal can convert an appeal of an interlocutory judgment into a supervisory writ, the court of appeal declined to do so here because the motion for appeal was filed beyond the thirty day period applicable to supervisory writs; appeal dismissed for lack of jurisdiction. McGinn v. Crescent City Connection Bridge Authority, 15-0165 (La. Ct. App. 4 Cir.7/22/15), found at la4th.org/opinion/2015/382783.pdf

CLASS CERTIFICATION

Plaintiffs sought class certification regarding claims of fraud, intentional infliction of emotional distress, and negligent infliction of emotional distress relative to traffic camera citations to "persons who received a Delinquency Notice from the City of New Orleans, Photo Safety Program" and which Delinquency Notice contained the statement "possible jail time may be assessed against you." Noting that potential class members must not only have received a notice with the above language but must also have read the grievous language, the court found that plaintiffs had not met the numerosity, commonality, or objectively definable class requirements for class certification. Albe v. City of New Orleans, Photo Safety Program, 14-1013 (La. Ct. App. 4 Cir. 7/29/15), found at http://www.la4th.org/opinion/2014/383229.pdf

DAMAGES

$5,000 for physical pain and suffering, $2,500 for mental anguish and distress, $2,000 for loss of enjoyment of life, and $3,000 for loss of consortium for neck injury causing headaches. Howard v. United Services Automobile Ass., 14-1429 (La. Ct. App. 1 Cir. 7/22/15), found at www.la-fcca.org/opiniongrid/opinionpdf/2014%20CA%201429%20Decision%20Appeal.pdf

Overturning an award of special damages for nondiagnostic expenses related to a seizure condition where the record did not support a causal connection between the seizure activity and the accident. However, finding that the plaintiff was entitled to hospital expenses incurred for diagnostic testing four days after the accident. This finding was based on Justice Lemmon's concurrence in Wainwright v. Fontenot, 00-492 (La. 10/17/00), 774 So. 2d 70, 78 which states: "When a tortfeasor causes an occurrence which subjects the tort victim to the reasonable possibility of serious injury, the tortfeasor is liable for the reasonable expenses incurred by the tort victim in consulting appropriate medical personnel and in insuring that the adverse effects of the occurrence will be prevented or minimized." Reed v. Lacombe, 15-120 (La. Ct. App. 3 Cir. 7/29/15) found at www.la3circuit.org/Opinions/2015/07/072915/15-0120opi.pdf

INSURANCE COVERAGE

Homeowner's policy provided: "If a claim or suit is brought against you or any covered person for the following; 1. Personal injury; 2. Bodily injury; or 3. Property damage. caused by an occurrence to which this coverage applies, we will: 1) pay on your behalf claims for which you or any covered person are legally liable . . . except as excluded by the provisions listed in the Liability Coverage - Losses We Do Not Cover . . ." The policy defined "personal injury" as an "injury arising out of one or more of the following offenses: libel, slander, . . . or defamation of character." "Losses We Do Not Cover" included a provision that "personal injury does not apply to: (a) Injury caused by a violation of a law or by, or with the knowledge or the expressed or implied consent of the covered person . . . (c) civic or public activities performed for pay by any covered person; (d) injury arising out of: (1) oral or written publication of material, if done by or at the direction of any covered person with knowledge of its falsity. The insurer refused to cover a claim against its insured that as a member of the Dental Board, he falsely charged the plaintiff with defrauding his patients and that these claims were knowingly false. While a contract of insurance may extend to cover the insured's negligent slander, libel or defamation of character, public policy forbids a person from insuring against his own intentional acts. Because the petition alleges intentional slander and defamation through a deliberate conspiracy among the defendants charged, the "personal injury" coverage therefore does not apply to such actions and likewise no duty to defend is owed by the insurer. Haygood v. Dies, 49,972 (La. Ct. App. 2 Cir. 8/12/15), found at www.la2nd.org/archives/docs/ddc6a6.pdf

The insurance policy included "temporary substitute automobile" as an "owned automobile" and defined it as "any private passenger, utility or farm automobile, not owned by the named insured or any resident of the same household, while temporarily used as a substitute for the owned automobile when the owned automobile is being serviced or repaired by a person engaged in the business of selling, repairing or servicing motor vehicles." At the time of the accident in a borrowed vehicle, the defendant's own vehicle was not "being serviced or repaired," although it was experiencing mechanical difficulties. La. R.S. 22:1296 mandates that coverage be extended to "temporary substitute vehicles" and that "such coverage shall be primary." The provision in the insurance policy impermissibly narrows or restricts insurance coverage required under La. R.S. 22:1296 by requiring that the owned vehicle be in the process of "being serviced or repaired." Litton v. White and State Farm Mutual Automobile Insurance Co. and Safeway Insurance Co. of Louisiana, 49,958 (La. Ct. App. 2 Cir. 7/1/15), found at www.la2nd.org/archives/docs/8241d1.pdf

The doctrine of equitable estoppel applies to situations where an insurer's custom of accepting overdue premiums reasonably led the insured to believe that his or her policy would remain in effect even though the premiums were not paid when due. In such a case, the following criteria apply: (1) there must be a habit or custom of accepting overdue premiums; and (2) the insured must reasonably believe that by reason of this custom the insurer will maintain the policy in effect without prompt payment of the premiums. Until 2011, the insurer repeatedly accepted payments that were paid up to ten days after the renewal notice due date and did not cancel the insured's policy. The insureds were reasonable to rely on the past habit of accepting late payments, even though the policy language changed in 2011 to remove the grace period for policy renewals in order to comply with a state requirement that insurers report cancelled or expired policies within 15 days and the insured received notice of this new provision. The insurer's custom of accepting late payments contradicted formal language in previous policies, so the insureds were reasonable in their belief that the informal policy of accepting late payments still existed despite new policy language. However, the insurer did not act in bad faith in terminating the insureds' policy for late payment because it acted reasonably in terminating the grace period in order to prepare for changes in the law and even without the new law, the insurer had the right to terminate the grace period at any time. The insurer merely denied and litigated a claim that it honestly believed was invalid. Ambrose v. Automobile Club Inter-Insurance Exchange, 49,994 (La. Ct. App. 2 Cir. 8/12/15), found at www.la2nd.org/archives/docs/b5969e.pdf

Because uninsured motorist coverage is an "implied amendment of any automobile liability policy" issued in Louisiana, and will be read into the policy "even when not expressly addressed," a plaintiff seeking to prove the presence of such coverage need only show that at the time of the loss he was insured by a policy of "automobile liability insurance delivered or issued for delivery in Louisiana and arising out of ownership, maintenance, or use of a motor vehicle registered in Louisiana and designed for use on public highways." The insurer bears the burden of proving any insured named in the policy rejected in writing the coverage equal to bodily injury coverage or selected lower limits. A properly completed uninsured motorist coverage form where the signatory rejected coverage creates a rebuttable presumption that the insured knowingly rejected uninsured motorist coverage. The burden then shifts to the insured to present evidence that the uninsured motorist selection form was in fact not properly completed. Louisiana's Uniform Electronic Transactions Act was crafted to prohibit the imposition of additional burdens upon the use of electronic signatures and the enforcement of electronic transactions. An electronically pre-filed and marked uninsured motorist rejection form meets the requirements under Louisiana law of a properly completed uninsured motorist coverage rejection. Rapalo-Alfaro v. Lee, 15-0209 (La. Ct. App. 4 Cir. 8/12/15), found at la4th.org/opinion/2015/383976.pdf

MEDICAL MALPRACTICE

Expert in cardiology and clinical electrophysiology not qualified to offer opinion on standard of care for a hospitalist or a general hospital. Penn v. Carepoint Partners of Louisiana, 14-1621 (La. Ct. App. 1 Cir. 7/30/15), found at www.la-fcca.org/opiniongrid/opinionpdf/2014%20CA%201621%20Decision%20Appeal.pdf

Plaintiff failed to prove the standard of care applicable to general surgeons performing laparoscopic gallbladder removal surgery. Defendant's expert testified as to the applicable standard of care and that defendant complied with it, while plaintiff's expert testified that an additional step was necessary in order to comply with the standard of care. However, plaintiff failed to prove that the applicable standard of care encompassed this additional step. Logan v. Schwab, 14-0591 (La. Ct. App. 1 Cir. 7/7/15), found at www.la-fcca.org/opiniongrid/opinionpdf/2014%20CA%200591%20Decision%20Appeal.pdf

NEGLIGENCE

Summary judgment affirmed in favor of wife of negligent driver where plaintiffs alleged that she knew her husband was prohibited from driving a vehicle without an ignition interlock device and that she knew or should have known that he on occasion operated one or more of their vehicles that was not equipped with an ignition interlock device. One who loans a car to another when the lender knows or has reason to know that the borrower is likely to use the car in a manner involving an unreasonable risk of physical harm, because of the borrower's youth, inexperience, intoxication, or otherwise, can be held liable to third party for damage caused by the borrower. Here, summary judgment in favor of the wife was proper because the plaintiffs failed to produce factual support sufficient to establish that she entrusted the car to her husband or that she had any knowledge of his impairment on the day of the accident. Further, the wife did not owe a legal duty to police or supervise the activities of her husband or to install an ignition interlock device on the vehicles. Toups v. Dantin and Allstate Property and Casualty Ins. Co., 14-1754 (La. Ct. App. 1 Cir. 8/3/15), found at
www.la-fcca.org/opiniongrid/opinionpdf/2014%20CA%201754%20Decision%20Appeal.pdf

The LSU Board of Supervisors is a state agency; therefore, La. R.S. 13:5106(B)(3)(c) applies to determine awards for future medical care and mandates that a claimant's future medicals be placed in the Future Medical Care Fund. Pursuant to La. R.S. 39:1533.2, any interest specifically earned on the award for future medical care must be deposited in and credited to the FMCF. Furthermore, costs and attorney's fees may not be paid out of the claimant's damage award for her future medical care. The exclusion-of-liability waiver clause in an agreement signed by claimant before her fall from a rock climbing wall was inadmissible because La. C.C. art. 2004 provides that any clause is null that, in advance, excludes or limits the liability of one party for causing physical injury to the other party. Further, rock climbing involves substantial risk, and the duty of a gym operator when these types of sports are conducted is one of reasonable care under the circumstances-to provide a sound and secure environment for undertaking a clearly risky form of recreation and not that of removing every element of danger inherent in rock climbing. The LSU Board did not have a duty to warn plaintiff about the potential effect of gravity. However, the LSU employees failed to properly instruct, demonstrate, and certify that plaintiff understood the proper techniques for climbing the bouldering wall in accordance with their duties as described in the LSU UREC "Indoor Climbing Wall Manual" and the safety clinic document, particularly with regard to "spotting." Loss of future earning capacity is subject to the $500,000 liability cap, while loss of future earnings is not. Because she was unemployed at the time of the accident, her award was for loss of future earning capacity and was subject to the

$500,000 cap. Fecke v. Board of Supervisors of LSU, 15-0017 (La. Ct. App. 1 Cir. 7/7/15), found at www.la-fcca.org/opiniongrid/opinionpdf/2015%20CA%200017%20Decision%20Appeal.pdf

An accident occurred while the Calcasieu sheriff's department was using school buses to evacuate 1200 prisoners before Hurricane Rita and using some deputies to drive who did not possess the proper endorsement required by state law. Pursuant to La. R.S. 29:735, the State, and its agencies and political subdivisions, are afforded complete immunity for injury or death resulting from emergency preparedness activities, except when they have engaged in willful misconduct in the course of preparing for a disaster or emergency. To constitute "willful misconduct," there must be some voluntary, intentional breach of duty, which may be unlawful, dishonest, or improper, or perhaps all three, that is committed with bad intent or, at best, with wanton disregard for the consequences. The use of these drivers did not amount to "willful misconduct" because in these less-than-ideal circumstances, the state agents made good faith, although perhaps imperfect, decisions about how to best evacuate numerous inmates from harm's way in order to preserve their lives. Koonce v. St. Paul Fire & Marine Ins. Co., 15-31 (La. Ct. App. 3 Cir. 8/5/15), found at www.la3circuit.org/Opinions/2015/08/080515/15-0031opi.pdf

A guest at a Motel 6 filed suit against Motel 6, the national Motel 6 franchisor, and the franchisee after he was shot by an armed robber in the parking lot, contending that a missing section in the motel's fence enabled the armed robber to enter the premises and shoot him. The court dismissed the strict liability claim against the franchisor finding it did not have custody or garde over the fence and the plaintiff failed to prove the missing section of fence created an unreasonably dangerous condition because the shooter could have entered the property through the open front gate or the pedestrian walkway. Further, regarding the negligence claims, the franchisor did not owe a duty to plaintiff to protect him from the criminal acts of a third party. The franchisor did not have actual authority over the franchisee, who was responsible for the safety and security of the motel's patrons. Finally, the franchisor did not have apparent authority because the plaintiff did not prove that he relied on a representation of the Motel 6 franchise in making his decision to stay there. Espinosa v. Accor North America, Inc., 14-1276 (La. Ct. App. 4 Cir. 7/8/15), found at la4th.org/opinion/2014/382003.pdf

WORKERS' COMPENSATION

A global settlement in which the plaintiff released the defendants from any future claims, damages, or injuries that might arise from a 1996 chemical exposure precluded him from asserting seeking workers' compensation benefits based on newly discovered evidence that he has now developed a cancerous condition. Bracken v. Payne & Keller Co., Inc., 14-0637 (La. Ct. App. 1 Cir. 8/10/15), found at www.la-fcca.org/opiniongrid/opinionpdf/2014%20CA%200637%20Decision%20Appeal.pdf

The statutory employer doctrine through the two contract theory was established to protect the employee and applies when (1) the principal enters into a contract with a third party; (2) pursuant to that contract, work must be performed; and (3) in order for the principal to fulfill its contractual obligation to perform the work, the principal enters into a subcontract for all or part

of the work performed. The statutory employer doctrine applies even where there are three or more intermediary contracts and where the general contractor/employer is the party who benefits because he will be immune from tort liability and workers compensation liability because the plaintiff's direct employer is insured and paid the workers' compensation benefits. Bernard v. The Lemoine Co., LLC, 15-152 (La. Ct. App. 3 Cir. 7/8/15), found at www.la3circuit.org/Opinions/2015/07/070815/15-0152opi.pdf

LABOR DAY SPECIAL: TOP TEN LABOR AND EMPLOYMENT LAW DEVELOPMENTS OF THE PAST YEAR
Presented by the LADC Employment Law Practice Group

1. Narrowing the "White Collar Exemptions under the FLSA: The long-awaited proposed rule modifying the "white collar" exemptions was released by the Department of Labor on June 30, 2015. The proposed rule would raise the requisite weekly salary level from $455 per week ($23,660 annually) to $970 per week ($50,440 annually). The salary level for the category of "highly compensated employees" would be raised from $100,000 per year to $122,148 annually. The proposed rule also would require indexing of the salary level "to guard against . . . erosion." The DOL estimates that the proposed rule will affect 5 million workers during the first year and result in payment of an additional $1.2 to $1.3 billion. The proposed rule was published in the Federal Register on Monday July 6, 2015. Interested parties were invited to submit written comments on the proposed rule, with the comment period closing on September 4, 2015.

2. New Election Rules Under the National Labor Relations Act: After two prior attempts to promulgate a new rule purporting to streamline its procedures for processing representation case (RC) petitions and holding related elections, the NLRB finally did so in December 2014. *See* 79 Fed. Reg. 74,307 (Dec. 15, 2014), *codified at* C.F.R. §§ 102.60 – 102.69 (effective Apr. 14, 2015). As expected, employer groups opposed to the new rule challenged it in court. So far, a federal district court in Texas has rejected a challenge, but the decision is on appeal to the Fifth Circuit. Associated Builders & Contractors of Tex., Inc. v. NLRB., No. 1:15-cv-00026 (June 1, 2015 W.D. Tex.), 2015 WL 3609116.

3. Title VII Claims for Failure to Accommodate Religion: EEOC v. Abercrombie & Fitch Stores, Inc., 135 S. Ct 2028 (2015) (No. 14–86). The Supreme Court held that an employer does not have to have actual knowledge of an employee's or applicant's religious beliefs in order for a claim of failure to accommodate to succeed. A plaintiff must prove a discriminatory motive, not knowledge. It is possible for an employer to have a discriminatory motive without actual knowledge; for example, an employer may act with motive based on a suspicion regarding the applicant's or employee's religion. The Court also explained that a failure-to-accommodate claim is not a separate claim, but it is either a disparate treatment or disparate impact claim.

4. FLSA Compensable Time: Integrity Staffing Solutions, Inc. v. Busk, 135 S. Ct. 513 (2014) (No. 13-433). The employer required its employees, warehouse workers who received inventory and packaged it for shipment, to undergo an antitheft security screening before leaving the warehouse each day. The employees contended the time spent waiting and being screened was compensable time under the FLSA. The Supreme Court held that the screenings were not the "principal activity or activities which [the] employee is employed to perform." The security

screenings also were not "integral and indispensable" to the employee's duties as warehouse workers. Therefore, the waiting and screening time were not compesable under the FLSA.

5. Discrimination Based on Sexual Orientation: In an EEOC decision in a federal sector case, the agency held that employment discrimination based on sexual orientation violates Title VII of the Civil Rights Act of 1964. The agency wrote, "Discrimination on the basis of sexual orientation is premised on sex-based preferences, assumptions, expectations, stereotypes, or norms. 'Sexual orientation' as a concept cannot be defined or understood without reference to sex." Complainant v. Foxx, EEOC Appeal No. 0120133080 (July 16, 2015), available at https://s3.amazonaws.com/s3.documentcloud.org/documents/2167512/complainantvfoxx.pdf

6. New Joint Employer Standard: The NLRB adopted a new standard for determining joint employer status in Browning-Ferris Indus. of Calif., Inc., 362 N.L.R.B. No. 186 (Aug. 27, 2015). "Under this standard, the Board may find that two or more statutory employers are joint employers of the same statutory employees if they 'share or codetermine those matters governing the essential terms and conditions of employment.' . . . If this common-law employment relationship exists, the inquiry then turns to whether the putative joint employer possesses sufficient control over employees' essential terms and conditions of employment to permit meaningful collective bargaining."

7. Pregnancy Discrimination: Young v. United Parcel Serv., Inc., 135 S. Ct. 1338 (2015) (No. 12–1226). The Supreme Court held that a plaintiff claiming pregnancy discrimination based on failure to make accommodations available to a pregnant employee that are made available to other temporarily disabled employees may prove her claim by using the McDonnell Douglas pretext analsyis. The analysis may have a short life because the Court suggested that such claims may be governed by the ADA Amendments Act of 2008.

8. Wellness Plans: The EEOC issued a proposed rule under the Americans with Disabilities Act on when employer wellness programs that include medical examinations and inquiries fit within an ADA exception for voluntary health care programs. (RIN 3046-AB01). Available at https://www.federalregister.gov/articles/2015/04/20/2015-08827/amendments-to-regulations-under-the-americans-with-disabilities-act. The EEOC filed lawsuits in 2014 alleging that employer wellness programs violated the ADA. See EEOC v. Honeywell Int'l, No. 14-4517 (D. Minn.); EEOC v. Flambeau, Inc., No. 3:14-cv-00638 (W.D. Wis. Aug. 2014); EEOC v. Orion Energy Sys., Inc., No. 1:14-01019 (E.D. Wis. Aug. 20, 2014).

9. Are Scholarship Football Players at Private Universities "Employees"?: We still do not know. The NLRB chose not to exercise jursidiction over the case in Northwestern University & College Athletes Players Ass'n (CAPA), 362 NLRB No. 167 (Aug. 17, 2015).

10. Telecommuting as a Reasonable Accommodation under the ADA: EEOC v. Ford Motor Co., 782 F.3d 753 (6th Cir. 2015) (reh'g en banc). After a panel of the Sixth Circuit had held that in some situations it might be a required reasonable accommodation under the ADA to permit an employee to work from home, the full court reversed and held that given the employer's words, policies, and practices, "regular and predictable on-site attendance" was essential for the job at issue.