

The Spotlight

JENNER & BLOCK Litigation Monitor

December 2009

Volume 1 • Issue 2

Litigation Department

Jenner & Block's Litigation Department is comprised of 330 litigators in offices in Chicago, Los Angeles, New York and Washington DC. The Litigation Department is organized in the following practice groups:

[Antitrust Litigation](#)
[Appellate & Supreme Court Practice](#)
[Bankruptcy Litigation](#)
[Class Action](#)
[Communications](#)
[Complex Commercial Litigation](#)
[Creative Content](#)
[Election Law and Redistricting](#)
[Employment Litigation](#)
[Environmental Litigation](#)
[ERISA Litigation](#)
[Government Contracts](#)
[Health Care Litigation](#)
[Insurance Litigation and Counseling](#)
[Intellectual Property](#)
[International Arbitration](#)
[Media and First Amendment](#)
[Product Liability and Mass Tort Defense](#)
[Professional Responsibility](#)
[Real Estate and Construction Litigation](#)
[Reinsurance Practice](#)
[Securities Litigation](#)
[Technology Litigation](#)
[Unfair Competition/False Advertising/Lanham Act](#)
[White Collar Criminal Defense & Investigations](#)

Spotlight Live

Save the Date: Keeping Your Company Out of Trouble in China

Jenner & Block is hosting "Keeping Your Company Out of Trouble in China: Anti-Corruption Developments and Compliance Strategies," a seminar on January 26 in the Firm's New York office and on January 27 in our Chicago office. The seminar will cover anti-corruption efforts in China that are fundamentally altering its business climate and deal-making activities. John Chu, Esq., a partner in the Jun He Law Offices in Beijing, and other professionals will discuss what is on the horizon in China and anti-corruption and compliance programs and best practices.

Message from the Co-Chairs of the Litigation Department

In the latest edition of the Litigation Spotlight, we highlight a number of developments that may be helpful to your practice. For example, continuing a recent trend regarding electronic discovery, we discuss two cases in Electronic Discovery regarding courts' frustration with e-discovery efforts. (*Capitol Records*, *Mirbeau*).

We also discuss a series of cases that concern the scope of protections afforded by the attorney-client privilege. In Securities Litigation, we discuss how the United States Court of Appeals for the Second Circuit expressly refused to apply the "fruit of the poisonous tree" doctrine to the administrative investigatory arena when it declined to quash an investigative subpoena based on allegedly privileged information (*SEC v. Finazzo*). In Professional Responsibility, we discuss a case where the Department of Labor Administrative Review Board held that an in-house attorney could use privileged information to support a retaliation claim under the Sarbanes-Oxley Act's whistleblower protection provisions (*Jordan*). In Privilege Issues, we discuss a number of other privilege decisions, including a court's limitation of a privilege waiver under the new Federal Rules of Evidence 502(a) (*SEC v. Bank of Am.*) and a holding that bondholders could introduce evidence that they had consulted with counsel without waiving the attorney-client privilege so long as they did not seek to introduce evidence that they had reasonably relied on the advice (*Aristocrat Leisure*). [More...](#)

Regards,

David J. Bradford and **Craig C. Martin**

Co-Chairs Jenner & Block Litigation Department

In This Issue

Senior Editor, **Barbara S. Steiner** and Issue Editor, **Craig A. Cowie**

Appellate & Supreme Court

- [Supreme Court Justices Question State Law Permitting Allocation Of Cost Of Notice.](#) [more](#)
- [Two And A Half Month Delay Renders Party's Intervention Motion Untimely.](#) [more](#)

Antitrust Litigation

- [Fifth Circuit Finds Potential Casino Rival Failed to Allege Antitrust Injury.](#) [more](#)
- [Potash Antitrust Litigation Claims Survive in Part.](#) [more](#)

Arbitration

- [Court, Not Arbitrator, Must Decide Unconscionability Issue.](#) [more](#)
- [Issuance Of "Final Award" Triggers Period To Move To Vacate.](#) [more](#)

Attorney-Client Privilege

- [Court Approves Rule 502 Non-Waiver Protective Order In Bank Of America Matter.](#) [more](#)
- [Evidence That Party Consulted With Counsel Does Not Waive Privilege.](#) [more](#)
- [Only An Article III Court May Determine Whether Privilege Applies.](#) [more](#)
- [Documents Inadvertently Produced Must Be Returned Per Protective Order.](#) [more](#)

Class Action

- [Supreme Court Justices Question State Law Permitting Allocation Of Cost Of Notice.](#) [more](#)
- [Third Circuit Upholds Phen-Fen Attorneys' Fee.](#) [more](#)

Complex Commercial Litigation

- [Punitive Damages Award Against FedEx Reduced On Appeal.](#) [more](#)
- [\\$1 Million Attorney's Contingency Fee Award Upheld In Contract Action.](#) [more](#)

Creative Content

- [Copyright Owners Obtain Rapid Injunctive Relief Against Infringing Website.](#) [more](#)

Electronic Discovery

- [Judge Demands Cooperation, Citing Sedona Conference Cooperation Proclamation.](#) [more](#)
- [Discovery Is Supposed To Be Self-Executing, Declares Frustrated Judge.](#) [more](#)

ERISA Litigation

- [Second Circuit Rejects Breach of Fiduciary Duty Claim Based on Alleged Oral Misrepresentation.](#) [more](#)
- [Eighth Circuit Holds Plaintiff Lacks Standing to Sue Overfunded Pension for Allegedly Excessive Fees](#) [more](#)

Litigation Department News

Olin Secures \$40 Million Second Circuit Win in 25 Year Insurance Coverage Dispute [more](#)

Jenner & Block Secures Arbitration Award for Constellation Management Group, Inc. [more](#)

Spacapan Edits, Jenner & Block Attorneys Author Unique Product Liability Treatise [more](#)

Following Supreme Court Win, Jenner & Block Secures Appellate Victory for Pro Bono Asylum Client [more](#)

In The Firm

Jenner & Block Chairman Tony Valukas is Chicago Lawyer Magazine's Person of the Year [more](#)

Grayson Honored with WBAI Women with Vision Award [more](#)

First Amendment

- [Eleventh Circuit Finds Campaign Flier Defamatory, Not 'Rhetorical Hyperbole.'](#) [more](#)

Health Care Litigation

- [Former BioTech CEO Convicted Of Wire Fraud.](#) [more](#)
- [Leading Nursing Home Pharmacy Agrees To Settle Multi-Million Dollar Kickback Allegations.](#) [more](#)

Intellectual Property

- [Medical Treatment Method Is Transformative and Patentable Under §101.](#) [more](#)
- [Northern District of Illinois Adopts Local Patent Rules.](#) [more](#)

International Arbitration

- [The McCarran-Ferguson Act Does Not Authorize Reverse Preemption of the New York Convention.](#) [more](#)
- [Second Circuit Holds Personal Jurisdiction Required To Confirm Foreign Awards.](#) [more](#)

Product Liability

- [Massachusetts Recognizes Medical Monitoring Cause Of Action.](#) [more](#)
- [Texas Finds Claims Against Railroad For Inadequate Warnings Preempted.](#) [more](#)

Professional Responsibility

- [Second Circuit Reverses Disqualification Of Defense Counsel On Eve Of Trial.](#) [more](#)
- [In-House Lawyer Can Use Privileged Info To Support SOX Whistleblower Claim.](#) [more](#)

Securities Litigation

- [SEC Brings First Case Alleging Improper Use of Non-GAAP Financial Measures.](#) [more](#)
- [Second Circuit Refuses to Quash SEC Subpoena Allegedly Based on Privileged Information.](#) [more](#)

White Collar Defense & Investigations

- [Settlement Reflects Trend Of DOJ Cooperation With Foreign Authorities.](#) [more](#)
- [CFO's Statements To Company Counsel During Investigation Not Privileged.](#) [more](#)

In The Spotlight: Attorney Profile



David J. Bradford

Partner

Partner David J. Bradford is Co-Chair of the Firm's Litigation Department. Mr. Bradford has served as lead trial counsel in a wide variety of significant lawsuits for Fortune 500 companies, financial institutions, officers and directors, law firms and entrepreneurs, and has successfully tried a number of complex cases to verdict in state and federal courts throughout the country. Most recently, he led the Jenner & Block team in securing a \$101 million jury verdict for tortious interference with business expectation, in federal court in Kentucky for an S&P 500 company. In recognition of his trial skills, the National Law Journal recently named Mr. Bradford one of 12 "Winning" litigators nationwide who exemplify "the qualities that make a great trial attorney." The profile noted his trial victory on behalf a NYSE-traded REIT, the U.S. District Court for the Northern District of California, in an important constitutional takings clause case, and commented on Bradford's "distinguished record as a trial attorney for big corporate clients in complex and novel cases with large sums of money at stake. Mr. Bradford also serves as outside General Counsel to the Roderick MacArthur Justice Center at Northwestern University Law School, and has provided important pro bono representation to death row inmates and detainees. [More...](#)