

DEFENSE NEWS

Fighting for Justice and Balance in Civil Courts



WASHINGTON DEFENSE TRIAL LAWYERS

Fighting for Justice and Balance in Civil Courts

Spring 2008

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“The future, according to some scientists, will be exactly like the past only far more expensive”¹

Washington Courts Hold the Line on Retroactive Application of the Insurance Fair Conduct Act

By Paul M. Rosner, Soha & Lang, P.S.

On March 28, 2008, in a case handled by Soha & Lang, P.S., Judge Marsha J. Pechman of the U.S. District Court for the Western District of Washington ruled that the Insurance Fair Conduct Act (“IFCA”) does not apply retroactively.²

Although not binding precedent on Washington State courts, decisions of the Western District are usually considered persuasive authority. Judge Pechman’s ruling follows similar rulings by a Magistrate judge in the same district and by the Chief Judge in the Eastern District of Washington.³ Together, these decisions suggest that Washington state courts will likewise hold that IFCA only applies prospectively, i.e., only to conduct after IFCA became effective on December 6, 2007.

The highly controversial Insurance Fair Conduct Act creates a new cause of action against insurance companies for unreasonably denying first party insureds’ claims for coverage or benefits, and, among other things, authorizes the award of uncapped treble damages. Since IFCA’s enactment, plaintiffs have been attempting to add IFCA claims for conduct occurring prior to the Act’s effective date.

In the *Aecon* case, a general contractor sought coverage as a putative additional insured under one of its subcontractors’ insurance policies for alleged construction defects at a hotel and casino project. The insurer denied the general contractor’s tender in 2006.

In February 2008, the general contractor sought leave to amend its complaint to add a cause of action under IFCA. Representing Zurich, Soha & Lang opposed the motion on the ground that IFCA did not apply to conduct occurring prior to its effective date.

Judge Pechman agreed, and denied the general contractor’s proposed amendment, reasoning that Washington courts presume that statutes operate prospectively unless contrary legislative intent is expressed or implied. However, a statute may apply retroactively if it is merely remedial and

Continued on Page 2

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Insurance From Page 1

concerns procedures or forms of remedies. Judge Pechman held that although IFCA provides remedies, it also “provides plaintiff with the right to proceed against the defendant for unreasonable conduct falling outside the scope of the other statutory causes of action.” Further, “because it affects substantive rights, imposes a penalty, and is couched in forward-looking language, the IFCA only applies prospectively.”

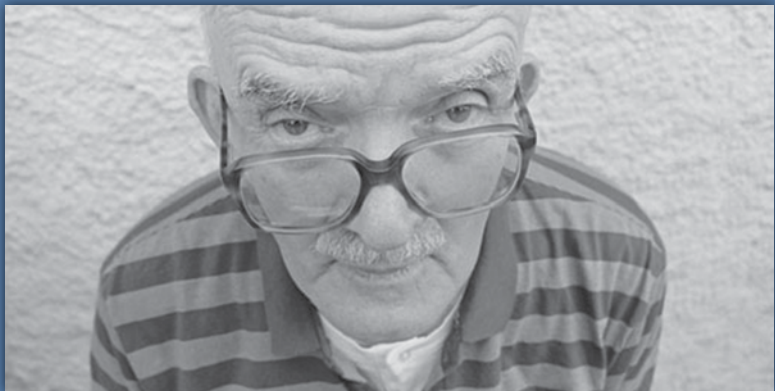
Aecon and the other federal decisions indicate that Washington State courts will also hold that IFCA only applies prospectively. However, many other issues regarding IFCA remain to be resolved.

1 John Sladek

2 *Aecon Buildings, Inc. v. Zurich N. Am.*, Order Denying Motion for Leave to Amend Complaint (W.D. Wash. C07-832MJP).

3 See February 1, 2008, ruling by Magistrate Judge James P. Donohue in *HSS Enterprises LLC v. Amco Insurance Company*, Order Denying Plaintiff's Motion to File Amended Complaint (W.D. Wash. 06-1485-JPD); February 19, 2008, ruling by Chief Judge Robert H. Whaley in *Malbco Holdings, LLC v. AMCO Insurance Company et al*, Order Denying Motion to Amend (E.D. Wash. CV-07-389-RHW).

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Book Review: *The Deskbook on Internal Investigations, Corporate Compliance and White Collar Issues*

Those who represent corporations are sometimes asked to advise their clients on internal investigations and the production of information resulting from events that may eventually lead to litigation. With the advent of new and complicated e-discovery issues as well as obligations imposed by securities laws and “white collar” criminal code, it is also becoming increasingly important that lawyers representing corporations have a working understanding of the obligations to retain, safeguard and produce information developed by a corporation during the course of its normal business. One resource that provides such information is reviewed below. This reference may also prove useful when considering objections to discovery requests that call for “proprietary business information” or assertions of privilege based on the argument that the company’s self-critical reviews should not be released.

Reviews

The Deskbook on Internal Investigations, Corporate Compliance and White Collar Issues

By Mirén First, Wilson Smith Cochran & Dickerson

The Deskbook on Internal Investigations Corporate Compliance and White Collar Issues is designed to provide a working knowledge of the many issues and potential pitfalls surrounding modern corporate criminal and regulatory practice. The book’s authors are all members of Kaye Scholer LLP’s White Collar Litigation and Internal Investigation Practice Group.

The book points out that in such areas as securities fraud, antitrust, health care fraud, and environmental law, corporate exposure to criminal and civil liability has increased exponentially. But, as a corporation’s exposure has increased, so have programs designed to provide corporations with leniency if they have engaged in vigorous self-policing by disclosing a potential violation and cooperating with the government. Today, there are two categories into which a corporation whose employees have violated criminal laws will fall: those that receive significant penalties, and those that receive lenient treatment, including amnesty because the company has adopted defense measures such as compliance programs to deter and detect criminal violations and have responded appropriately to violations. This book is designed to help corporate counsel ensure that his or her company ends up in the latter group.

The book is divided into two major sections. The chapters in the first section address the process of conducting internal investigations when corporate employees’ wrongdoing is suspected. The book offers practical advice regarding conducting an internal investigation; protecting or understanding how attorney-client privilege may be waived; responding to a grand jury subpoena; facing the commencement of a U.S. Securities and Exchange Commission action or administrative proceeding; and protecting a business’ interest and rights in the face of a search warrant. It also provides an overview of civil

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forfeiture proceedings; self-policing programs and procedures to advocate in favor of leniency in the face of a criminal conviction; examines programs in the area of environmental enforcement, securities law, antitrust violations, and defense procurement fraud; and examines corporate deferred prosecutions and non-prosecution agreements.

The chapters in the second half of the book provide a general overview of the criminal statutes and theories used to prosecute drug and device manufacturers; the regulations relating to the control of exports, especially so-called "dual-use" items that have both military and non-military applications; the guidelines financial institutions should follow to deter and

detect transactions that may involve the proceeds of official corruption by senior foreign political figures, their immediate family or close associates; perjury statutes; and the U.S. Foreign Corrupt Practices Act. There is also an appendix containing relevant federal guidelines, memoranda, reports, ethics opinions and a model confidentiality agreement with the Securities Exchange Commission.

This deskbook provides two functions. First, it provides an overview of some highly technical areas. Second, it assists a practitioner decide whether to seek the help of an attorney that specializes in the relevant area. After reviewing the deskbook, it is abundantly clear that no matter how well-intentioned the practitioner

may be, he or she may do their client more harm than good if they begin to dispense advice before thoroughly understanding the potential implications. This book will ensure that a practitioner has a working knowledge of the many issues surrounding modern corporate criminal and regulatory practice.

You can order a copy of the book online at http://www.pli.edu/product/book_detail.asp?ptid=501&stid=59&id=EN00000000034568



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Behind the Scenes at the United States Equal Employment Opportunity Commission

By Nancy Maisano, *Maisano Mediation*¹

Significant Changes under The Bush Administration

The U.S. Equal Employment Opportunity Commission has undergone significant changes under the Bush Administration as a result of budget cuts, hiring freezes and downsizing. These changes over the past seven years have had a direct impact on charge processing, investigations and mediation. The Commission's workforce has been reduced by more than 25% nationwide. In the Seattle EEOC office, the results are even more drastic: Seattle's investigative team has shrunk from 19 investigators in 2000, down to 10 investigators today. Additionally, through an agency-wide reorganization, the Seattle office has been downgraded to a field office, and has consequently lost its district director, regional attorney and enforcement manager.

Charge Statistics

The Commission enforces Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act and the Equal Pay Act. The Seattle EEOC office, which covers Washington, Oregon, Idaho, Montana and Alaska, typically receives 1,500 charges of discrimination each year. The following chart shows the allocation of charges based on type discrimination claimed and the difference between the charges filed with the Seattle office and the charge statistics for the entire nation. Two differences for the Seattle region are the higher percentage of disability and national origin discrimination complaints compared to the national percentage. Overall for fiscal year

2007, the EEOC received the largest volume of charges since 2002 and the largest annual increase (9%) since the early 1990s.

	Seattle FY-07	Nationwide FY-07
Race	30%	37%
Gender	30%	30%
Retaliation	29%	32%
Age	25%	23%
Disability	26%	21%
Nat'l Origin	16%	11%
Religion	6%	4%

Batching

As part of a preliminary triage process, after the initial intake of a new charge, each charge is designated as "A," "B" or "C," depending on the relative apparent merit of the charge. The "A" charges are characterized as such because they appear to be a meritorious claim, while the "C" charges appear to be very weak. The vast majority of the charges received-typically around 70 percent-are designated as "B" charges. This process, known internally as "batching," serves as an initial rough cut and is based on the information provided by the charging party. Since the batching process occurs before respondents submit their position statements, re-designations are quite common once the investigator receives more information about the charge. The charges designated as "A" and "C" are sent directly to the investigation unit and the B cases are sent to the mediation unit. The Commission considers the specific designation of each charge through the batching process as privileged

agency information. However, receiving an invitation to mediate is a solid indication that the charge has been designated as a "B" charge.

Investigation

As a result of the significant decrease in the number of investigators in the Seattle office, the average waiting period for an investigator to be assigned to a charge is 7-9 months (in 2000, when the enforcement unit was fully staffed, the waiting period for assignment to an investigator it was 2-4 weeks). Despite this delay in charge processing, respondents are required to submit their position statements in response to the charge and respond to a request for information pursuant to a deadline imposed upon the initial service of the charge. The Seattle EEOC office will provide 2-week extensions fairly liberally and longer extensions with a reasonable basis. Because the information submitted by respondents (and charging parties) to the Commission will become available through a Freedom of Information Act request upon completion of the investigation, respondents should pay close attention to the content of their position statement. A sure-fire way for a respondent to exacerbate the discrimination dispute is to provide changing or contradictory explanations for an employment action.

It is important for employers to establish a rapport and a constructive working relationship with the investigator. Approaching the Commission's investigation process in an adversarial manner is not likely to achieve a better result than working cooperatively and professionally with the

Continued on Page 6

investigator. Since the investigators are typically swamped with charges awaiting investigation, respondents and their counsel should take steps to make the investigator's job easier. For example, when faced with what appears to be an overly broad request for information, a respondent should engage in a substantive discussion and negotiation with the investigator to try to narrow the scope of the request. Rather than frustrating the investigator or forcing the Commission to use its subpoena power, a respondent will be better served by taking a more cooperative and proactive approach to the investigation.

Outcome of the Investigation

Upon the close of the investigation, the investigator will conduct a pre-determination interview which serves as a last chance to influence the outcome of the investigation for the party against whom the Commission is likely to decide. Before dismissing a claim for lack of reasonable cause for finding discrimination, the investigator will contact the charging party, notify him/her of the expected determination and ask for any additional information that may change the outcome. At this point, a charging party may ask for the investigation to be halted immediately to avoid a dismissal for no cause. Upon such a request, the Commission will stop the investigation and issue a Notice of Right to Sue (NRTS) which will allow the charging party to proceed to litigation. In the Seattle office, approximately 10% of all charges are closed in this manner.

Similarly, before issuing a "cause finding" against a respondent, the investigator will notify the respondent and ask for any additional

information that may sway the final determination. In the absence of any additional determinative information, the Commission will issue a cause finding. Respondents do not have a similar ability to halt the investigation to avoid an adverse finding, or cause finding. There remains a slim prospect for respondents in this situation to avert a cause finding. Respondents may request at this stage to transfer the charge to the mediation unit for an attempt to resolve the dispute in mediation. If the charging party or the Commission does not agree to the transfer, the cause finding will be issued. If the charge is transferred to the mediation unit, and mediation is successful, the case will be closed without a cause finding and a NRTS will not be issued.

Closure Statistics for Seattle

Dismissal for "No Cause" after full investigation (NRTS issued) **50-60%**
Voluntary withdrawals prior to investigation (including successful resolutions in mediation unit) **30%**

Closure prior to completion of investigation (NRTS issued) **10%**
Cause finding (NRTS issued) **5-10%**

Mediation

Mediation at the EEOC is offered to all "B" cases prior to the start of the investigation. During the mediation process, the investigation and the position statement deadline are held in abeyance pending the outcome of the mediation. The process is voluntary, confidential and cost effective in part because the mediation services are offered free of charge to the participants. Historically, Seattle had a highly successful program with resolution rates and respondent participation rates among the highest in the country. Currently, with only one internal mediator and with the loss of the mediation coordinator position, the mediation unit in Seattle's EEOC office is a skeleton of its past. The Commission relies increasingly on contract mediators and pro bono mediators to mediate the cases that

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have been convened for mediation. If a charge is successfully resolved in mediation, the investigation will be avoided and the charge will be closed. If the mediation is unsuccessful or if the parties decline the mediation invitation, the charge is transferred to the investigation unit.

Litigation

Each year, the five EEOC trial attorneys and one supervisory trial attorney in the Seattle office typically file 15-25 lawsuits on charges that were investigated and resulted in cause findings by the enforcement unit. If the charging party is already represented by counsel, the plaintiff counsel and the EEOC will work together as co-counsel in the litigation. The types of cases the litigation unit chooses to litigate depend on a myriad of factors. The litigation unit will look closely at cases involving discrimination occurring in a “traditionally underserved” geographic area—an area in which there are not many plaintiff-side employment lawyers. Charges of discrimination falling within one of the EEOC’s current enforcement priorities (See below.) are more likely to be selected for litigation. The litigation unit will also look out for systemic cases involving an employer’s underlying policies and practices that may have far-reaching impact.

For example, last year the EEOC brought a nationwide class case against Walgreens for race discrimination in the promotion and assignment of African Americans. The case involved 10,000 class members and settled for \$20 million. At the same time, the trial unit may look closely at a case involving what appears to



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be a flagrant violation of discrimination laws, but low economic damages making it hard for a charging party to find a lawyer willing to take the case to litigation.

Current Initiatives

The EEOC implements evolving enforcement priorities that are typically posted on the public website (www.eeoc.gov) and are publicized in the press releases issued upon the filing of lawsuits as part of the EEOC litigation program. Currently, the EEOC is focused on race and color discrimination as part of its E-RACE Initiative (Eradicating Racism and Colorism in Employment) and discrimination against young employees as part of its Youth @ Work Initiative. National origin discrimination has emerged as a more significant issue for the EEOC than in the past as a reflection of the changing demographics of the nation's workforce and the post-September 11 political climate. In June, 2007, the EEOC issued new enforcement guidance (also available on the EEOC website) that seeks to more specifically identify the disparate treatment against workers with caregiving responsibilities that falls within the general prohibitions contained in Title VII and other federal laws. This

guidance has proven to be somewhat controversial among employers who interpret the guidance as the creation of another protected classification without Congressional authorization. The matter will likely be resolved through the federal court system. Another recent enforcement guidance involves veterans with service-connected disabilities in the workplace.

1 Nancy Maisano recently left the Equal Employment Opportunity Commission's Seattle office to begin a private mediation practice, Maisano Mediation, LLC. Her insights as a former EEOC litigator and mediator provide a glimpse into how the commission processes charges from start to finish. Ms. Maisano worked in the EEOC's Seattle office as a trial attorney and then a mediator for 7 years. She left the EEOC in 2007 to launch a private mediation practice in Seattle where she continues to mediate employment disputes and is available to take cases at all stages of litigation, including those pending before administrative agencies.



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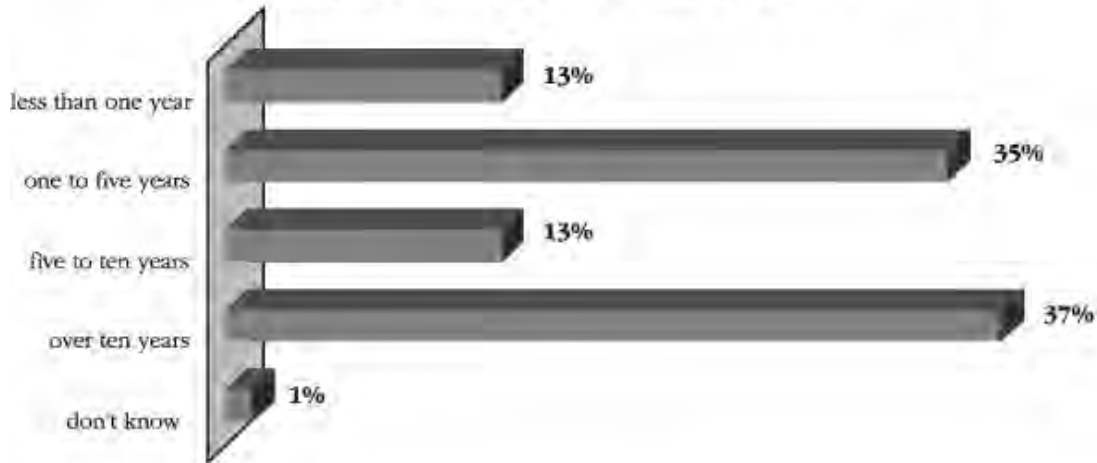
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Member Survey Results

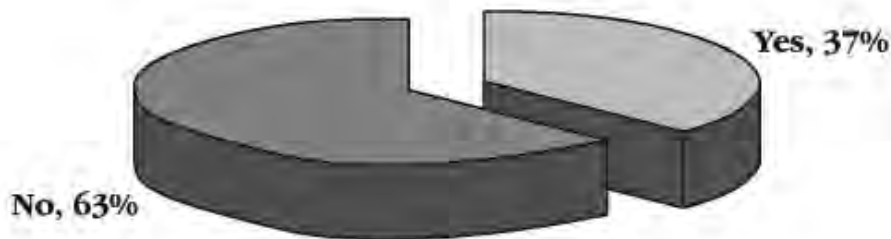
do to improve (and also to get a feel for who our members are). Out of 600 WDTL members surveyed, we received 75 responses (a 12.5% return rate).

The results are:

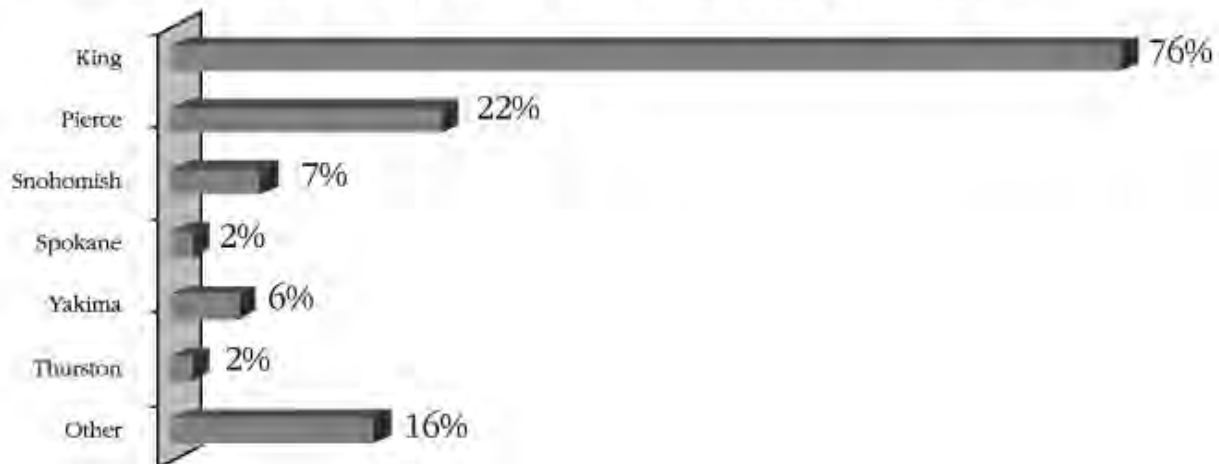
How long have you been a WDTL member?



Are you a member of DRI?

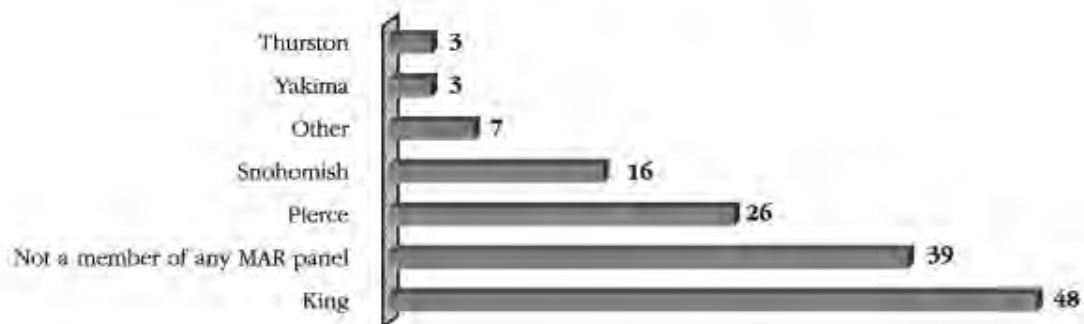


To what local Bar Association(s) do you belong?

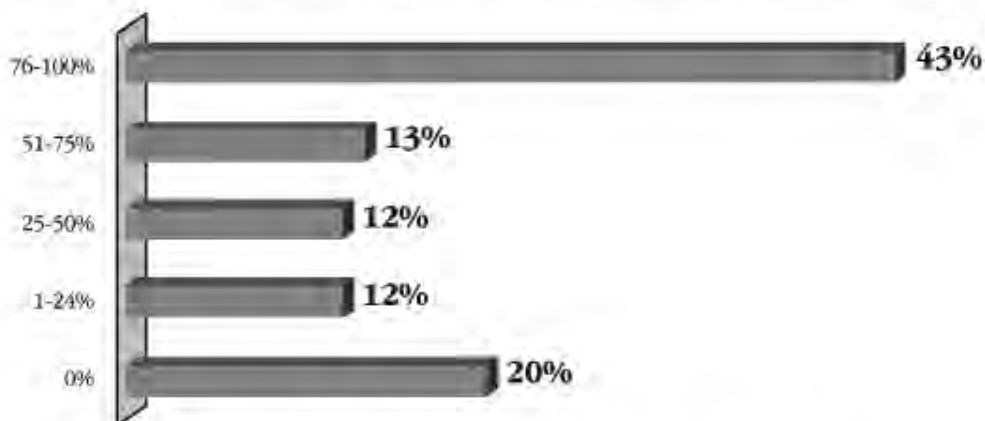


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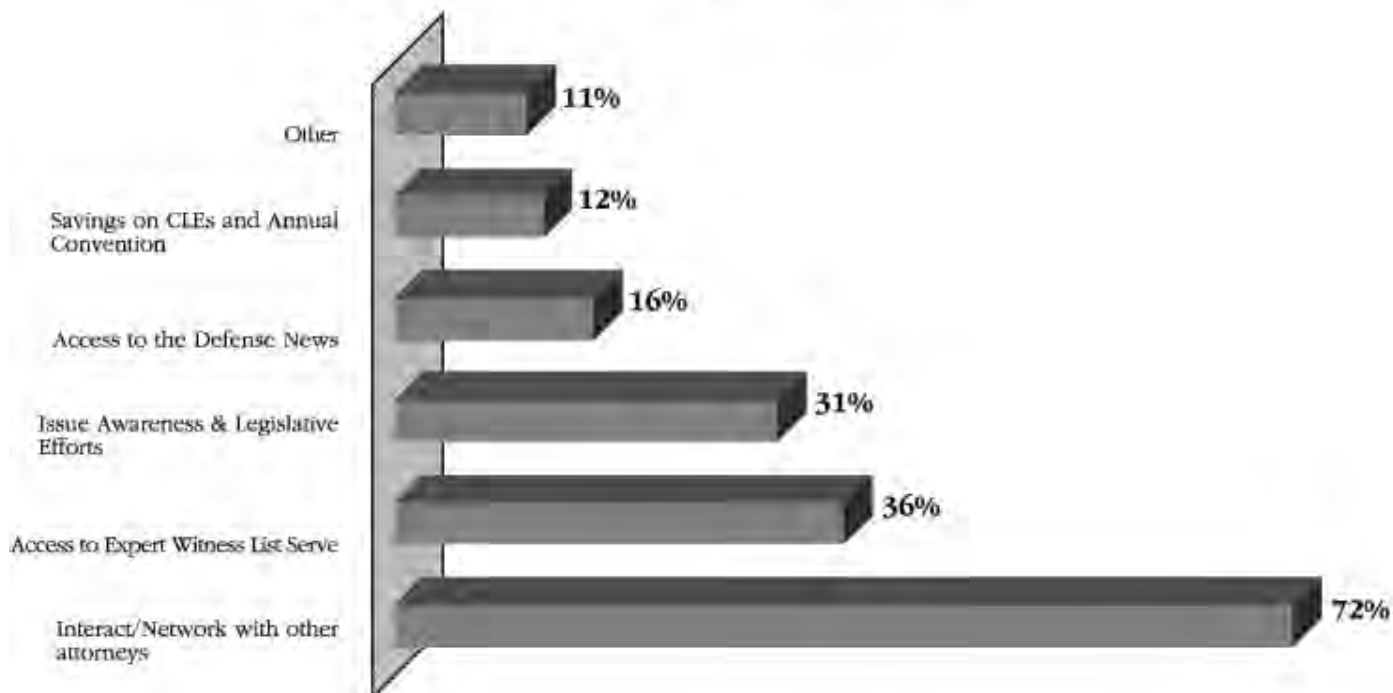
In what counties (if any) are you a member of the MAR panel?



What percentage of your practice is devoted to traditional insurance defense such as auto defense, other casualty defense, slips and falls, etc.?



What is the main reason you joined WDTL?



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What other services would you like WDTL to offer its members?

- (Influence the legislature, the governor, the media, and the public regarding new anti establishment legislation and judge made law
- (A more active and useful brief bank
- (Two things: One, please please please make a brief bank available to the listserve via your website; two, devise the ability to archive then enable listserve members to search the archive of all prior emails circulated among members. I am a member of a WSBA listserve that offers that ability via a Yahoo Groups page/site. Thank you for considering these suggestions
- (On line briefs
- (WDTL does a fine job already
- (Brief bank or expert witness repository (perhaps would cut down on repeat requests on listserv)
- (I would like to see more members use list serves for other than expert witness questions. I would also like to see a database of shared pleadings or motions, for some of the specific issues faced by defense folks
- (more CLEs
- (maintain brief bank for issues maintain dep transcripts of expert witnesses
- (brief banks, CLE discounts
- (Searchable access to issues from past listserve responses and a place to see and post information on specific issues
- (something should be worked out to keep old guy and gals in the group - incentives of some sort
- (A website where we can share our pleadings, like WSTLA has
- (The difficulty with participating from Olympia cannot be understated. Phone in to brown bags is not very effective and certainly cannot justify driving to them. I think gathering information regarding new trends or facts that the plaintiff's bar is utilizing is the most important thing that can be done. We get some of that but need to expand that so we all have the benefit of this new information and how to defend the activities
- (None. WDTL does a very nice job of balancing the services it provides with the available time within which to perform those tasks. The services provided are quite good
- (Mentor/mentee program for younger attorneys
- (Amicus briefing in cases containing important defense issues
- (more online services like a brief bank and an expert database with "user reviews"
- (Develop an in-house counsel division focused not on defending lawsuits, but on preventing lawsuits from being filed. This could be a membership recruitment tool

What can WDTL improve?

- (The public image of defense lawyers
- (Listserv and website-based available services
- (Increase size, clout for legislative efforts
- (Organize/filter expert witness listserv or add additional categories to keep non-business and repeat requests to a minimum, or at least to provide an appropriate forum for those who want to be involved
- (More interactive/networking events
- (Informing the public on the Judge elections and even Legislative elections. WSTLA seems to get their folks elected, we should be letting folks know who is anti-business or pro-business for example
- (More regular section meetings
- (You are doing great, thank you!
- (Increase number of meetings and functions; energize/activate committees
- (Better outreach to members with information on what the Board is doing and what issues the organization is facing
- (Bigger turn out for Annual Convention.
- (Access to new clients
- (Better website, more sharing of resources
- (Nothing, other than hopefully to provide more of the same services it already provides
- (Have a spring networking event
- (Location of Annual Meetings

Overall, how satisfied are you with WDTL services, programs and benefits?



Thank you for participating in the survey - we have already implemented some suggestions and will continue to strive for improvement based on your feedback.

A Work/Life Balance Pays: Changing How Law Firms Do Business

By Jessica L. Goldman

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Innovative and flexible law firms in Seattle and around the country are acknowledging that 1,800 billable hours are not the hallmark of quality and financially rewarding lawyering. They are discovering that firms that support lawyers who work fewer hours to achieve work/life balance not only attract, but also keep, great lawyers, resulting in satisfied clients and new business.¹

This approach serves as a counterpoint to the law firm culture that has evolved over the last several decades: bringing in bright, creative and energetic young attorneys and then, ultimately, churning out large numbers of dissatisfied lawyers.

In 1961, a “full-time” lawyer billed 1,200 hours per year.² That meant a 25-billable-hour work week. There were hours in the day and in the week to spend outside the practice of law, with family, exercising, engaging in a hobby or traveling.

In contrast, today’s mainstream law firm demands high output from each timekeeper. High billable hours - typically at least 50% more than was worked by lawyers of the 1960s - is deemed required to be a good lawyer, to service client needs and to float law firm economics. Time spent off the clock in the 1960s and 1970s now is spent chasing additional billable hours, thereby creating legions of lawyers who are dissatisfied, depressed and burned out.³ Lawyers who do not embrace this regime are perceived as

unprofitable, undedicated and incapable of doing the high-quality work of their higher-billing colleagues.

To a large degree, lawyers today who buck this system are women. They are parents who seek a true work/life balance. They want something apparently radical: to be excellent, dedicated attorneys doing high-quality work, partnering with their clients and building their law firms, while being able to participate meaningfully in the lives of their children.

There also are a growing number of male attorneys who want to work fewer hours so they, too, can play a larger role in their family lives.⁴ And, perhaps most radical of all, there are those lawyers who simply want to “have a life” outside the office.

In a 2007 survey of mid-level associates at the nation’s largest law firms, only 44.9% predicted they will be at their firms in five years.⁵ A significant role in associate departures is the stated desire for work/life balance.⁶ James J. Sandman, managing partner of Arnold & Porter from 1995 to 2005, acknowledges: “The single biggest source of dissatisfaction in our profession is the inability to achieve work/life balance. And the cause of that inability is the hours lawyers feel they are expected to work.”⁷

But law firms lose much more than just talented attorneys when they walk out the door. The most obvious collateral damage from regular turnover is to client relationships. Working relationships are damaged,

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momentum and institutional memory are lost, and the client commonly pays to get new lawyers up to speed.

Linda Madrid, general counsel of CarrAmerica, explains: "It is frustrating when outside counsel don't provide consistent lawyers. ... [N]othing [is] worse than investing in and relying on someone, and then having that person pulled out. Or, even worse, the firm isn't treating them well enough to keep them."⁸

The effects are external, too. More and more, recruiting lawyers and maintaining and attracting clients also are on the line. Forty-four percent of law students are women⁹ and, according to a 2001 survey, 50% of women law graduates found that work/life balance was the primary consideration in choosing an employer.¹⁰ By the same token, more and more corporations are shopping for law firms that retain and promote women and attorneys of color.¹¹

In 2004, Shell Oil Company's General Counsel Catherine Lamboley conducted a beauty contest to reconsider which law firms Shell would use for its substantial legal work.¹² The four criteria guiding Shell's process were quality, cost effectiveness, professionalism and - by no means least - commitment to diversity. Applicants had to report the number of women and minority attorneys at their firms. Of the 27 winning firms, seven have partnerships in which women and minority lawyers outnumber white men. Not surprisingly, many of the Shell law firm teams are led by women partners.

A growing number of corporations employ meaningful tools to evaluate whether the firms they use "walk the walk." Shell's search for a diverse body of outside counsel did not end with the initial beauty contest. Its law firms must break down their invoices to indicate the gender, ethnicity and race of the billing attorneys.¹³ Similarly, Sears, Roebuck & Co. monitors the fees it pays to women- and minority-owned law firms and tracks the hours billed by women and minorities at their other firms.¹⁴ Johnson & Johnson requires the law firms doing its legal work to report quarterly regarding the work being performed by women and minority attorneys.¹⁵

Corporate clients also look a lot more diverse today. In 2004, there were 103 women or minority general counsels at Fortune 500 companies compared with only 25 in 1996.¹⁶ As of 2005, half of the in-house counsel at Starbucks were women. Women comprise 44% of Wal-Mart's legal department.¹⁷

How should a law firm respond to a competitive environment where both lawyers and clients appreciate and value diversity? Naturally, there are myriad answers. However, those firms that adopt and implement - without penalty - a balanced-hours program will attract and retain women lawyers.

Seattle's Summit Law Group, for example, has embraced the idea of reduced-hour lawyering. In this 22-member firm, eight of whom are women, nearly 30% of the members work reduced hours - 75-90% of the standard 1,800 hours.

These women have sophisticated practices and long-standing, critical relationships with satisfied clients. They are valuable members of client development teams in the diversity and wealth of experience they bring to the table. These members respond to the flexibility with tremendous loyalty to the firm, which results in negligible lawyer turnover.

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When it comes time to do the numbers, Summit attorneys working balanced-hours schedules are allocated a percentage of overhead equivalent to the percentage of a full-time schedule. The result is a vibrant, profitable and diverse law firm.

Plainly, recognizing and appreciating the value that women lawyers bring to a firm and adopting balanced-hour policies to support their practices create good “quality of life” law firms. It also makes good business sense. A firm of high-quality, diverse and engaged lawyers has precisely the tools necessary to improve firm profitability and client satisfaction.

Jessica L. Goldman is a member of Summit Law Group where her practice focuses on commercial litigation and media law. She is the mother of a 10-year old and a 7-year old. She wishes to thank her partners Lynn Engel and John Chun and her lawyer-husband Adam Shapiro (who also works a balanced-hours schedule) for their assistance with this article. She may be reached at jessicag@summitlaw.com or 206-676-7062.

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A big THANK YOU to our members who referred these individuals to WDTL.

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Pro Bono Corner

By Matthew Wojcik, Jackson & Wallace LLP & Chair of WDTL's Pro-Bono/Community Service Committee

While February may seem a little early for spring cleaning, the WDTL Pro Bono Committee decided it was the perfect time for a spring cleaning coat drive. The holidays had passed, filling closets to the rafters, and the weather was (and still is!) cold enough that those less fortunate could use a warm coat... so the second Annual WDTL Winter Coat Drive was launched. The response was tremendous! Within days of the announcement, Kristin's office was stuffed with coats – enough that it was almost impossible to move around. When it was finally over (to Kristin's appreciation), the Salvation Army was blessed with enough coats that it took several trips to get the piles of coats loaded into the truck. Special thanks go to Catherine Brumbaugh of Betts Patterson & Mines, Tamara M. Whitney of Carney Badley Spellman and Richard F. Johnson of Jackson & Wallace, who all deserve recognition for going above and beyond the call of duty in getting donations and delivering them to the WDTL office. An additional thanks goes to Carney Badley for their monetary donation in addition to the coats.

The March Pro Bono event, while lightly attended, was a lot of fun. Heather Carr of Stafford Frey Cooper organized a morning packing ears of frozen corn at Food Lifeline on March 28th. Kristin Lewis, Heather & Steve Abel of the Law offices of Steve Abel packed over 930 pounds of frozen corn in three hours, providing 726 meals for the hungry. In addition to making a fashion statement - with hairnets, latex gloves and aprons - these brave souls had a great time in the freezer room, and the work went quickly.

Thanks again WDTL members for your support of the Pro Bono projects. Look for more pro bono projects to come – and please give us feedback on what you would like WDTL to do in the future.



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(Left to right: Anthony R. Scisciani III, Mark P. Scheer, John E. Zehnder, Jr., Jonathan Dirk Holt and Dennis G. Woods)

Mark P. Scheer (Managing Partner 2000-2007) handed over the reins to John on January 1, 2008. The Firm would like to thank Mark for a job well done and congratulate him for growing Scheer & Zehnder from a four attorney firm in Seattle to a dynamic group of 14 lawyers with offices in Seattle and Portland. Though Mark has relinquished his role as Managing Partner, he will not be slowing down. Mark will continue to manage and litigate cases, and otherwise dedicate himself to providing excellent customer service to the firm's clients.

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President's Column: This is Not Your Father's WDTL...

By WDTL President, Rick Roberts, Law Office of Sharon J. Bitcon



I couldn't resist using this title, a take on the old Oldsmobile ad campaign from the '80's. As some of you may know, my father, the late Judge Frank H. Roberts, was WDTL's President in 1969. WDTL has come a long way since then, and we ought to reflect on how far we've come and recognize the good work of many people.

Officially, WDTL was established in 1962, although its roots go back several years before that. A small close-knit group of defense lawyers started meeting informally to counter the growing influence of the national organization, now known as the American Association of Justice, and its companion state organization, WSTLA. The details of these early years were not well recorded. There is a WDTL "history" with no attributed author, but I strongly suspect Dick Crockett had a hand in writing it. Not surprising for defense lawyers, until we hired our first Executive Director in 1986, record keeping was sparse. Many thanks to Dick for providing us with at least some of these early details.

The predominant theme of the early years was an emphasis on the camaraderie among fellow defense counsel. The more "substantive" aspects of the organization like a newsletter and continuing legal education, came later. It wasn't until the mid-70s that the organization went "state-wide" and membership increased from about 75 members to 150 in the process. Annual meetings had been held, but became more organized starting in 1978. In 1982 the "Defense Press" newsletter began.



(l to r) 1988 - WDTL President Bill Leedom, Judge James P. Healy, Judge Walter T. McGovern, Judge Frank H. Roberts, WDTL Trustees Mark Johnsen & Mike Runyan.

In 2008 our membership is almost 800 representing all corners of the state. We continue to host judicial receptions in Seattle and Spokane. We have eight standing committees, including the Practice Development Section, which hosts well attended noontime CLEs on a monthly basis. We present 11 CLEs a year, including the annual Insurance Law Seminar and Construction Defect program, all of which are very well attended. There are also eleven active Practice Sections, including a new Asbestos section added this year.

One of the most significant recent advancements was hiring our lobbyist in Olympia, Mel Sorensen. Through Mel's guidance we are making progress in educating legislators, professional groups and businesses alike that WSTLA is not the only group of trial lawyers in Washington. Last year, we held very well-attended programs for physicians around the state to explain the changes in medical mal-

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practice law. We have held networking events for law students at the University of Washington and Seattle University, and will soon be doing the same at Gonzaga. Most of the credit for these successful events goes to our Executive Director Kristin Lewis. Many of you have done your part too.

We may not have as many members or be as well funded as our counterparts at WSTLA, but what we may lack is made up by the commitment and energy of our members volunteering their time and talents. For example, the Amicus Committee monitors cases on appeal and prepares amicus briefs in support of defense positions as a counter to the very active WSTLA amicus committee. The committee and its long-standing chair, Stew Estes of Keating Bucklin & McCormack, have done an outstanding job of identifying cases on appeal and preparing briefs in support. Many other members volunteer their time and talents in many ways with little or no recognition, which is truly remarkable when compared to other lawyer groups.

We have accomplished much and built upon the work of our predecessors, but we also may have drifted away from the association's initial rallying cry of over 40 years since passed: socializing with our colleagues. I know my Dad really enjoyed his time with WDTL and had many fond memories of the dinners and meetings. Our lives may be more complicated today, and I am proud of all we have accomplished, but we should not forget about the spark of camaraderie that gave us our start.

This July will be our annual convention at Harrison Hot Springs in beautiful British Columbia. If you haven't made plans to attend, please do, and let's continue this important tradition with our colleagues.

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WASHINGTON DEFENSE TRIAL LAWYERS

Application for Membership

1. The undersigned hereby makes application for membership with the Washington Defense Trial Lawyers, representing that a substantial portion of my practice is devoted to representing defendants, companies, or entities in civil litigation:

Name _____

Firm Name _____

Office Address _____

City _____ State _____ Zip _____

Home Address _____

Phone (_____) _____ WSBA Bar # _____

FAX (_____) _____

E-mail _____

2. Year of Admission to Bar _____ Legislative District _____

3. State degrees held, both academic and law, year of graduation and school: _____

4. If you were referred to WDTL by a fellow attorney, please list name here: _____

5. 2007-2008 Membership Dues

Attorneys

Admitted to the Bar more than 5 years \$250.00
Admitted to the Bar less than 5 years \$200.00

Other

Government Attorney \$125.00
Retired Member \$100.00
Paralegal \$75.00
Law Student \$10.00

6.a. YES! I would like to serve on the following WDTL Committees.

- | | |
|---|---|
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| <input type="checkbox"/> Membership | |

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7. I would like to contribute \$150.00, \$100.00, \$50.00 (minimum \$20.00) to fund WDTL's legislative advocacy and outreach program.

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Questions? Contact Kristin Lewis, WDTL Executive Director at (206) 749-0319 or kristin@wdtl.org

9. Dated this _____ day of _____, 20 _____

10. Signature of Applicant: _____

WDTL Events Calendar for 2008 (register online at www.wdtl.org)

May

30 Construction Defect Academy – Washington
State Convention & Trade Center

July

17-20 WDTL Annual Convention –
Harrison Hot Springs, B.C.



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