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## Litigation Newsletter

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Winter 2017

### **A COMPILATION OF RECENT LITIGATION DEVELOPMENTS AND NOTABLE FLASTER GREENBERG LITIGATION**

#### **Design Patent Damages: Samsung v. Apple**

In a high-stakes case between two tech-world giants, the Supreme Court in *Samsung Electronics Co. v. Apple Inc.* dismissed a \$399 million dollar jury verdict in favor of Apple for Samsung's infringement of Apple's smartphone design patents. At issue in the case were several Apple design patents granted as early as 2009 which cover various aspects of the design of the first-generation iPhone including its black, rectangular front face with rounded corners and the distinctive interface displaying a grid of sixteen colorful icons on a black screen. At trial, the jury found that several Samsung smartphones infringed Apple's design patents under 35 U.S.C. § 289, which holds the infringer liable for its total profits.

#### **Resolving Physician Disputes with Hospital Medical Staffs Through the Use of Confidential Settlement Agreements**

Physicians and hospital medical staffs often have disputes over issues such as denials of applications for privileges or summary suspensions of a physician's medical staff privileges. A hospital's medical staff bylaws include standards for investigating issues related to a physician's behavior or competence as well as qualifications for medical staff privileges and membership. Denying or suspending a physician's privileges may result in the physician exercising procedural rights under the bylaws by notifying the Medical Executive Committee (MEC) that the physician wishes to proceed with a fair hearing. **MORE**

#### **Mandatory Waiver of Employee Class Actions Up for Supreme Court Review**

Employers will soon have much more clarity on how far they can go to require employees to sign binding arbitration agreements that prohibit employees from participating in class action lawsuits against their employers. Earlier this month, the U.S. Supreme Court agreed to review a set of appellate court decisions that have split on the issue of whether class action (and collective action) waivers in employment agreement arbitration clauses violate the National Labor Relations Act (NLRA). **MORE**

#### **5 Things to Keep in Mind When Planning for a Divorce**

**Part I (Part II will appear in the next issue of Flaster Greenberg's Litigation Newsletter):** As Neil Sedaka said, breaking up is hard to do. When planning for a divorce, a careful and calculated approach is required to protect your interests. This article will highlight five things to consider based on our firm's decades of handling these cases, both in court and in private resolutions. These tips focus primarily on New Jersey's divorce laws and procedures. Divorce laws vary from state-to-state, but these tips are generally helpful to a wide range of divorce situations.

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### **Hot Topics in Bankruptcy Law: Alter Ego Claims**

Most of us believe that when we set up a corporation to conduct business, we've accomplished many positive things. One of these, in particular, is that we've shielded ourselves from personal liability for any of the company's business obligations. Unfortunately, that may not always be the case. Whether your business is financially sound, or is having cash flow issues, individual owners are not immune from suit by an aggressive creditor, or some other party seeking to recover a claim for a variety of other reasons.

In such cases, a plaintiff may file suit against not only the corporation, but its owners, officers or directors. How and under what circumstances can this type of action be successful? When can you be personally responsible for the debts of your corporation?

### **City Of Philadelphia Enacts Law Making It Unlawful For Employers To Ask Job Applicants For Their Salary Histories**

Philadelphia has been prominently featured in the local and national news lately for enacting new laws that can be classified collectively as having as one of their primary purposes an attempt at "social engineering." Just last year, the City enacted an ordinance, popularly referred to as "Ban the Box," which made it illegal for Philadelphia employers to inquire about a job applicant's history of criminal convictions. In so doing, Philadelphia joined a national trend of similar enactments by several other government entities, all motivated by a desire to improve employment prospects for ex-cons. Then, a little later last year, Philadelphia enacted a first-of-its kind soda tax, which, although probably aimed primarily at creating a new source of revenue, was rationalized, in large part, by the Philadelphia City Council that passed it as a measure to try to curb juvenile obesity among inner city children.

### **Recall Alert: The Service Advisor Exemption The Courts Just Can't Fix**

In what Yogi Berra might describe as a case of "déjà vu all over again," the U.S. Court of Appeals for the Ninth Circuit issued a January 9th decision holding that dealership service advisors are not exempt from overtime requirements under the Federal Fair Labor Standards Act (FLSA). In short, the Court ruled service advisors, who were historically exempt under a dealership-specific exemption, must now be paid overtime for hours over 40, unless another exemption applies. **MORE**

## **NOTABLE FLASTER GREENBERG LITIGATION DEVELOPMENTS**

### **Flaster Helps Client Prevail in High-Profile Litigation and Attorneys' Fee Award in Federal Court**

Flaster Greenberg attorneys **Michael Homans** and **Melissa Hazell Davis** won a \$2.335 million jury award for our client, Security and Data Technologies, Inc. (SDT), in a lawsuit against the School District of Philadelphia, establishing that the district had unlawfully discriminated against SDT by de-selecting it for a \$7.5 million government contract because of race. Federal Judge Mitchell Goldberg sweetened the win in December, when he awarded SDT and its attorneys an additional \$1.3 million in pre-judgment interest, attorneys' fees and costs, bringing the total award of more than \$3.6 million. The judge praised the quality of advocacy by Flaster's attorneys, calling their submissions "consistently well written, professional and persuasive." These rulings were widely reported in *The Philadelphia Inquirer* and *The Legal Intelligencer*.

To read our firm's Case Study on the ruling, [click here](#).

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**EXTRA! EXTRA! READ ALL ABOUT IT!**

**Philadelphia Bar Reporter**

Flaster Greenberg associate Annie Kernicky currently serves as an associate editor for the Philadelphia Bar Reporter, and reports monthly on Committee and CLE news for the PBR. Below are links to her recent reports:

**Handling Your First Federal Case: Tips from the Bench**

(January 2017)

**Tips for Success: Motions for Summary Judgment**

(December 2016)

**'Place of Public Accommodation' Targets Internet**

(November 2016)

**Managing Cyber Risk in an Ever-Changing Digital World**

(October 2016)

*For more information on the items contained in this newsletter, we invite you to contact the authors, or visit our website, [www.flastergreenberg.com](http://www.flastergreenberg.com).*