

THE DOCKET

A DISCUSSION OF BUSINESS ACTIONS AND LEGAL ISSUES FROM THE UTILITY BUSINESS ATTORNEYS AT PARR RICHEY OBREMSKEY & MORTON

OFFICE LOCATIONS

INDIANAPOLIS

Capital Center South
201 North Illinois Street
Suite 300
Indianapolis, IN 46204
Phone: 317.269.2500
Toll Free: 888.337.7766
Fax: 317.269.2514

LEBANON

225 West Main Street
PO Box 668
Lebanon, IN 46052
Phone: 765.482.0110
Toll Free: 888.532.7766
Fax: 765.483.3444

ATTORNEYS

Don F. Morton

Kent M. Frandsen

Charles W. Ritz III

Larry J. Wallace

James A. L. Buddenbaum

Randolph G. Holt

Jeremy R. Comeau

Michael L. Schultz

Jeremy L. Fetty

Timothy L. Karns

PARR RICHEY ATTORNEY HELPS BLOOD CENTER NAVIGATE COMPLEX LEGAL ISSUES

Every two seconds someone needs blood in the United States. Unfortunately, this critical need is amplified by the reality that people do not recognize the critical services that local blood centers provide to patients.

Parr Richey partner James A. L. Buddenbaum recognizes the importance of the Indiana Blood Center to Indiana. For over 15 years, in addition to providing legal services and counsel to utility clients, Mr. Buddenbaum has proudly served as corporate counsel for the Indiana Blood Center. It supplies blood, blood components and blood testing services to over 60 hospitals throughout Indiana, as well as to other large blood centers throughout the United States.

Getting blood from the volunteer donors to the recipients entails an immense amount of work. Beyond drawing blood and providing the necessary medical services, corporate legal service and counsel is required to ensure a continuous safe supply of blood. Mr. Buddenbaum has enjoyed the long relationship working on both general business matters and complex

legal issues for the Blood Center. As a nonprofit 501(c)(3) tax exempt organization, the Indiana Blood Center constantly faces legal issues in trying to expand, grow, and maintain its business plan.



Parr Richey Attorney Jim Buddenbaum poses with Indiana Blood Center CEO and employees. Mr. Buddenbaum has represented the IBC as corporate counsel for more than a decade.

As a “health care provider” subject to the Indiana Medical Malpractice Act, the Blood Center has been faced with constant challenges in assessing risks associated with new blood pathogens, including human immunodeficiency virus (HIV). As advisor

to the Blood Center’s Medical Advisory Committee, a board populated by pathologists, anesthesiologists and other specialists from other area hospitals, Mr. Buddenbaum periodically assists in providing advice regarding when a particular test should be instituted.

“The IBC makes it easier to give this advice since it always prefers to err on the side of protecting the blood supply even in the face of increased financial risks associated with instituting new viral marker tests,” says Mr. Buddenbaum.

The Blood Center is also faced with unique business challenges. Obtaining volunteers who meet the United States Food and Drug Administration requirements for supplying the blood and blood components used to deliver its life-saving services to hospitals is one challenge. Another challenge is the fiscal challenge.

The Blood Center needs to recoup the extensive costs associated with testing, packaging, and shipping the blood supply. “IBC is aggressively looking for cost saving strategies such as expanding its donor and customer base, acquiring new assets such as blood mobiles or other donation centers, and

Continued on page 2

Continued from page 1

purchasing and implementing state-of-the-art software and hardware for testing and tracking units of blood,” explains Mr. Buddenbaum. “Consequently, I am reviewing and advising, at any one time, multiple contracts, that always have complex risk allocation and business components. I truly enjoy the variety and complexity of the work I do for the Blood Center. But most importantly, I enjoy being a small part of assuring the continuous safe supply of blood to Indiana patients.” ■



If you would like more information about Mr. Buddenbaum, please log onto www.parrlaw.com or email him at jbuddenbaum@parrlaw.com.

The Pre-Employment Interview Dilemma



Jeremy L. Fetty

Recently, the Equal Employment Opportunity Commission (EEOC) placed a spotlight on employment testing and screening in order to gather information as employers seek efficient ways to screen large numbers of applicants. Employment testing and screening are used to eliminate unqualified and unsuitable persons, but the EEOC has raised concerns regarding discrimination against women and members of minority groups. Pre-employment interviews are also used to eliminate unqualified and unsuitable persons. Unfortunately, they can also be used to improperly deny employment opportunities

in a discriminatory manner in violation of federal laws, including Title VII of the Civil Rights Act, the Americans with Disabilities Act, and the Age Discrimination in Employment Act.

Employers need to know what questions are appropriate for an interview. Court rulings and EEOC guidelines prohibit questions which would screen out disproportionate members of minorities or members of one sex that are not valid predictors of job performance or cannot be justified as “business necessity.” See *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). Employers must be able to justify that questions are for “business necessity” both in purpose and in how obtained information is used.

Family questions are one category of questions that is typically inappropriate, including questions regarding: children; marital status; and whether family members work at the establishment or have in the past. Data on such matters as marital status, number and ages of children, which could

be used in a discriminatory manner but which are necessary for insurance reporting requirements or valid purposes, should be obtained after the person has been employed, not by a pre-employment interview.

A second category of inappropriate questions is regarding national origin or race, including: where parents are from; native language;



citizenship; and race.

The third category is personal information questions, including: height and weight; arrest records; home ownership; type of military discharge; age; religion; health; disabilities; alcohol or drug addictions; psychiatric or psychological

evaluations; prior worker’s compensation insurance filings; dating; high school graduation year; and clubs or organizations.

The questions described above are categories of questions, some of which may be asked under certain circumstances, but should be avoided if at all possible. If faced with a discrimination suit, an employer bears the burden of proving that answers to such questions were not used discriminatorily in making employment decisions and sought only information that was essential to the evaluation of employment qualifications.

A clear rule is – do not ask questions that are not related to the specific job for which the applicant is interviewing. Even if related, it is critical that employers assess the need for questions which could provide information that could be a source for discrimination. ■

If you would like to discuss pre-employment interview issues, please contact Jeremy Fetty at jfetty@parrlaw.com.

Department of Homeland Security Sets New Regulations for Security and Safety



Timothy L. Karns

In October 2006, Congress directed the Department of Homeland Security (DHS) to develop regulations establishing risk-based performance standards for the security of chemical facilities and requiring high risk chemical facilities to conduct vulnerability assessments and implement site security plans. In fulfillment of its charge, DHS promulgated its Chemical Facility Anti-Terrorism Standards (CFATS). Contrary to its name, this program affects much more than the chemical industry. In fact, it is possible that cooperative G&Ts and some distribution cooperatives may, at a minimum, be required to comply with CFATS' reporting requirements.

In order to determine which facilities are a high

level security risk, DHS has established an elaborate process to collect the necessary information. Under CFATS, a facility is required to complete and submit a "Top-Screen" on DHS' secure website if it: (1) received an individualized request from DHS, (2) falls within certain criteria set forth in published Federal Register notice, or (3) possesses any of the chemicals listed in Appendix A of the regulation at the corresponding screening threshold quantities (STQs). As a result of DHS' decision to include chemicals like chlorine, ammonia, propane and nitric oxide in Appendix A, cooperatives may need to complete and submit a "Top-Screen" to DHS.

Under CFATS, a facility that possesses any of the chemicals listed in Appendix A at the corresponding STQ must have submitted their "Top-Screen" on or before January 22, 2008. If, after this date, a facility comes into possession of one of these chemicals at the corresponding STQ they must submit a "Top-Screen" within 60 calendar days of coming in possession of the chemical. Compliance with these provisions is not optional. CFATS grants DHS the exclusive authority to conduct

audits and inspections and otherwise enforce the chemical security regulations. In fact, CFATS authorizes DHS to assess penalties of up to \$25,000 for each day a violation continues and even permits DHS to order a facility to cease its operations for noncompliance.

In order to avoid these sanctions, the owners and operators of any facility should inspect their stock and make sure that they do not possess any of the chemicals listed in Appendix A at the corresponding STQ. A careful and thorough examination of your operations today will ensure that you don't face costly penalties tomorrow. ■



If you have any questions or would like more information, please contact Timothy Karns at tkarns@parrlaw.com.

Parr Richey Attorney Takes Free Speech Case to U.S. Supreme Court



Michael L. Schultz

Lawsuits regarding constitutional rights to free speech under the First Amendment tend to be highly technical attempts to balance the rights and interests of the governmental entity involved with those of the individual. This area of law, long avoided by most attorneys, has been a focus of Parr Richey attorney Michael Schultz's practice for over a decade, providing him some of the most interesting and high profile cases of his career. In fact, his most recent First Amendment case, *Mayer v. Monroe County Community School Corporation*, took him and his client all the way to the United States Supreme Court. Schultz's client, a Monroe County School teacher, alleged that her right to free speech had been violated when she

was punished for making comments favoring peaceful solutions to the rising tensions in Iraq. The case, which received extensive local and national media coverage, was followed very closely by the National Education Association and the National School Boards Association, as well as by teachers and administrators nationwide.

The case finally reached its conclusion when the U.S. Supreme Court opted not to hear oral arguments, and affirmed the decision of the Seventh Circuit Court of Appeals in Chicago. Although the Supreme Court decided against hearing arguments in the case, the efforts put forth by Schultz and his client succeeded in focusing much-needed attention on the issue of proper balance between the rights of individuals to express their opinions on matters of great public concern, and the rights of school boards to control how those subjects are taught. ■

Michael Schultz has concentrated his practice on complex employment-related litigation, as well as other business litigation, representing both employers and employees alike. If you would like more information, please contact Mr. Schultz at mschultz@parrlaw.com.

**NEXT ON THE DOCKET:
Randolph (Randy) G. Holt**



Randy G. Holt

Partner Randy Holt concentrates his practice in the areas of corporate law and governance, electric cooperative law and taxation, corporate formation, mergers and acquisitions, utility law, commercial contracts, real estate transactions, zoning and land use, employment law, and state and local taxation. He regularly assists large and small business clients in forming new companies, buying and selling businesses, and negotiating complex business contracts. His background in private industry and state government prior to entering the practice of law gives Mr. Holt a broad understanding of the issues facing his many business and individual clients.

He is a member of the Indiana State, the Indianapolis, and the Electric Cooperative Bar Associations. He is admitted to practice in the state of Indiana, the Northern and Southern Districts of Indiana, and the Seventh Circuit Court of Appeals. Mr. Holt also serves as the Vice-Chair of the Indiana Board of Accountancy. ■

If you would like more information about Mr. Holt, please log onto www.parrlaw.com or email him at rholt@parrlaw.com.



*Front Row: Jeremy Comeau, Chuck Ritz, Don Morton, Randy Holt, Larry Wallace and Tim Karns
Back Row: Jim Buddenbaum, Mike Schultz, Kent Frandsen and Jeremy Fetty*



Capital Center South
201 North Illinois Street
Suite 300
Indianapolis, IN 46204

THE DOCKET

PRSRT STD
US POSTAGE
PAID
INDIANAPOLIS, IN
PERMIT #6783

- Alternative Dispute Resolution
- Appeals
- Business Organizations
- Divorce & Family Law
- Education
- Estate Planning & Probate
- Governmental Affairs
- Labor and Employment
- Litigation
- Medical Malpractice
- Personal Injury
- Real Estate and Land Use
- Utilities Law
- Wrongful Death