BROOKS, PIERCE, MCLENDON, HUMPHREY & LEONARD, LLP

EMPLOYMENT LAW REVIEW

SUMMER 2007

A Summary of Current Labor, Employment, Benefits & Related Information

Jennings v. Dorrance and UNC: Soccer, Sex, and Second Hand Harrassment

In a highly publicized case which has been in the court system for eight years, the Fourth Circuit Court of Appeals, sitting *en banc*, recently held that Melissa Jennings, a former soccer player at UNC, could continue to trial with her lawsuit claiming that her coach Anson Dorrance's sexual comments toward her and members of the female soccer team at UNC constituted sexual harassment by creating a sexually hostile environment. The Fourth Circuit also held that the University had actual knowledge of the alleged sexual harassment, but did not take appropriate action to address the complaints. Therefore, Ms. Jennings may continue her suit against UNC as well. The ruling by the *en banc* Fourth Circuit, rendered on April 9, 2007, reversed a three judge panel of the Fourth Circuit, which had upheld the dismissal of the case against Coach Dorrance and the University by the U.S. District Court for the Middle District of North Carolina. The case has been remanded to the trial court and, absent settlement, a jury trial will take place.

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ALLEGED FACTS

The allegations that Ms. Jennings and several other team members made against Coach Dorrance included the following:

> Coach Dorrance, often in front of the entire team, singled out individual players and asked questions about whether, with whom, and how often they were having sex. For example, Coach Dorrance allegedly made the following comments to team members in a team/group setting:

- [Who is your] f— of the week?
- [Are you] going to f— your boyfriend and leave him?
- How many guys on the [lacrosse team] did you f—?
- Coach Dorrance asked one player about the size of her boyfriend's genitalia and suggested to another that she "just had to keep her knees together."
- Coach Dorrance allegedly told a trainer that he would like to have group sex with his Asian players.
- Coach Dorrance allegedly told Debbie Keller (an All-American player who also sued Coach Dorrance and settled her case) that he would like to be a fly on the wall the first time a particular player (who he assumed was a virgin) had sex.
- Coach Dorrance often made comments in the presence of the players about a certain female's "nice racks" [referring to her breasts] and "nice legs."
- Coach Dorrance openly accused at least three players of being promiscuous, asking them questions such as "Is there a guy you haven't f—ed yet?" during practices or at team meetings.

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NEWS IN A NUTSHELL

FEDERAL MINIMUM WAGE INCREASED: Effective July 24, 2007, the federal minimum wage will increase to $5.85 per hour. The federal minimum wage will continue to increase over the next two years: on July 24, 2008, the federal minimum wage will increase to $6.55 per hour, and on July 24, 2009, the minimum wage will increase again to $7.25 per hour. Note that in North Carolina, the minimum wage is still higher than the increased federal minimum wage, and is currently $6.15 an hour.

GENETIC INFORMATION NON-DISCRIMINATION ACT IS PENDING: Recently, the United States House of Representatives passed legislation that would make it unlawful for employers or health insurers to discriminate against individuals based on their genetic information or test results. This law would amend Title VII, ERISA, and other insurance laws to prohibit employers from refusing to hire, discharging, or otherwise discriminating against employees on the basis of genetic information. The law also would prevent group health plans from adjusting premiums on the basis of genetic information, would prohibit insurers from requiring genetic testing, and would prohibit the collection of genetic information for purposes of underwriting. The bill has now moved to the Senate and seems likely to pass; the Bush administration also favors enactment of the bill.

PENDING LEGISLATION IN NORTH CAROLINA TO ESTABLISH PAID SICK DAYS: The North Carolina House of Representatives has passed a bill that would require all employers to provide up to seven days of paid sick leave to all employees each year. If enacted as proposed, employees would be able to use paid sick leave for their own illness, for the illness of a child, spouse, parent, or parent of spouse, and for routine medical appointments for themselves or any of the individuals listed above. The proposed bill also would allow employees to use the paid sick leave to address the effects of domestic violence.

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- Coach Dorrance also showed overt affection—affection of the sort that was not welcomed—for one player, Keller, in front of the entire team. He paid inordinate attention to Keller, frequently brushing her forehead, hugging her, rubbing her back, whispering in her ear, dangling a hand in front of her chest, or touching her stomach.

According to the players who made allegations against Coach Dorrance, this conduct was ongoing and occurred at all times and places—including team meetings, practices, and while the team was traveling.

Ms. Jennings herself, according to her testimony, was subjected to harassment on only two occasions:

- Ms. Jennings testified that Coach Dorrance called her to his hotel room while they were traveling in California to assess her performance as a freshman player. Ms. Jennings described the scene as "being alone with a 45 year old man who was her coach and had complete power over her in a dark hotel room, knee to knee, bed not made, sitting at one of those tiny tables." During the conversation he also asked Ms. Jennings, "Who are you f—ing?"

- During a team warm up session, Coach Dorrance allegedly asked Ms. Jennings if she had had "the same good weekend" with her boyfriend as another player who he had just described as having had a long, sex-filled weekend with her visiting boyfriend.

Ms. Jennings and others also alleged that during the fall of 1996, Ms. Jennings met with UNC's highest ranking lawyer, a female who had been officially designated by the University as the person to whom claims of sexual harassment should be made. Ms. Jennings alleged that she told the UNC attorney about Coach Dorrance's sexual comments about his players in great detail and reported that the situation was causing her personally to have feelings of discomfort and humiliation. According to Ms. Jennings, the UNC attorney's response to her was that Coach Dorrance was a "great guy" and that she should work out her problems directly with him. The UNC attorney took no further action on the complaint and Coach Dorrance's harassment continued.

LEGAL ANALYSIS

The Fourth Circuit observed that, for purposes of deciding whether summary judgment against the Plaintiff was appropriate or whether the case should proceed to trial, the

court had to take as true allegations of the plaintiff and the witnesses who had given statements/testimony on behalf of the plaintiff. Among the Fourth Circuit's rulings, using that standard, were the following:

1. While this case was filed under Title IX of the Civil Rights Act (relating to colleges and universities), the Fourth Circuit used principles established under Title VII of the 1964 Civil Rights Act (which of course applies to private employers) in reaching its decision.

2. The Fourth Circuit concluded that Ms. Jennings had put forth sufficient evidence for a jury to find that Coach Dorrance's degrading and humiliating conduct was sufficiently severe and pervasive to create a sexually hostile environment. In addition to the fact that the alleged conduct crossed the line of mere joking or boorish behavior that might innocently appear in a sports setting between coach and players, the Fourth Circuit emphasized the persistent and pervasive nature of the comments and behavior. The Court also pointed to several aggravating factors in this case:

    a. The Fourth Circuit noted that there was a tremendous "disparity in power" between Coach Dorrance and his players. Coach Dorrance is the most successful women's soccer coach in U.S. college history and coaches the U.S. National Team. He has tremendous power and influence over a player's opportunity for achieving in the soccer world both at UNC and beyond.

    b. The Court also noted the age disparity between the harasser and the victims, pointing out that this was a case of a 45-year old man probing into and commenting about the sexual activity of young women, some of whom were as young as 17.

3. Without using the term, the Fourth Circuit then enunciated the theory which has been called by most commentators "second hand harassment" or "target harassment" as being applicable in this case. The theory is that while an individual may not have been <u>personally</u> subjected to sufficient sexual comments or other conduct to create a sexually hostile environment against her, she may be successful in a sexual hostile environment suit if she shows that she <u>witnessed</u> persistent, severe sexual misconduct against others of her sex which would amount to sexual harassment. As mentioned, Ms. Jennings testified that she personally was only subjected to two incidents of harassment by Coach Dorrance. Those two incidents, standing alone, probably would not have amounted to sexual harassment sufficient to give Ms. Jennings a cause of action. However, those two incidents, coupled with the severe and pervasive sexual misconduct that Jennings observed on a daily basis against her female team members, were enough to give her a cause of action sufficient to survive summary judgment and to entitle her to a jury trial.

4. The Fourth Circuit also found that, reviewing the evidence in the light most favorable to Ms. Jennings, UNC would remain as a party to the suit during the jury trial and that the University itself could be liable if the jury so found. The Fourth Circuit noted that Ms. Jennings had complained to an official who had authority to address the alleged discrimination and to institute corrective measures. The official (an attorney) had actual knowledge of alleged discrimination and failed adequately to respond or displayed deliberate indifference to such alleged discrimination. The Fourth Circuit therefore found that the attorney who received Ms. Jennings' complaints and did nothing subjected the University to liability by her inaction and attitude taken with Ms. Jennings.

<u>LESSONS LEARNED</u>

The Jennings case merits special attention for private employers on at least two major points:

Second hand harassment. Under this theory, the number of potential plaintiffs in a sexually hostile work environment situation is greatly expanded. Not only is the individual who is the direct object of sexual comments and other conduct of a severe and pervasive sexual nature able to file a lawsuit, but other persons of the same sex who may not themselves have been subjected to such misconduct also may bring a suit in circumstances such as those alleged by Ms. Jennings. It is therefore incumbent upon employers to insure that the work place is free of sexually suggestive comments and other misconduct <u>even if the object of the comments or other misconduct does not seem to be upset by the actions of the perpetrator</u>. If the actions are severe and pervasive enough to create a sexually hostile work environment, it does not matter to whom the comments and misconduct are specifically directed.

University liability. The alleged inaction of the University attorney to the complaints voiced by Ms. Jennings should be a warning to all employers to take every step possible to insure that all complaints are

QUICK QUIZ

QUESTION: How many employees must an employer have in order to be covered by federal laws prohibiting race discrimination in employment?

ANSWER: Page 6

treated seriously and addressed in a timely and effective manner. Even if Ms. Jennings were allowed to proceed against Coach Dorrance, the University could have avoided liability altogether if the official to whom Jennings complained had promptly acted to take steps reasonably designed to stop the harassment. This case illustrates the temptation to be dismissive of complaints made against persons who are in positions of great authority. Equate Coach Dorrance (who continues to coach women's soccer at UNC and has racked up several more national championships since the suit was filed) to a Vice President in your company. No matter who the person is who has been complained against, a company must take allegations against that person seriously and conduct an investigation to determine the facts. Indeed, as the Fourth Circuit pointed out in finding a sexually hostile environment in this case, the higher up in the organization the perpetrator is, the more likely the court is to find a violation of Title VII using the "disparity in power" factor.

In conclusion, it will be interesting to see how the Jennings case plays out—whether the University will feel strongly enough about this issue to go through the trauma of a highly publicized jury trial, or whether it will seek to settle this matter. In any event, the case should serve as a wake-up call to all employers in this geographic area regarding the legal principles which have now been established in the Fourth Circuit. ■

Supreme Court Clarifies When Pay Discrimination Claims are Timely or Too Late

In *Ledbetter v. Good Year Tire & Rubber Company*, the Supreme Court held in a 5-4 decision that an employee's claims of pay discrimination under Title VII (which prohibits discrimination based on race, sex, religion, and national origin) were too late. In *Ledbetter*, the Court considered the following question: ***Can a plaintiff bring a cause of action under Title VII for illegal pay discrimination when the disparate pay is received during the statutory limitations period, but is the result of intentional discrimination that only occurred outside the limitations period?***

Rejecting the position of the Equal Employment Opportunity Commission ("EEOC") and the position of several federal appellate courts, the Supreme Court answered this question, ***"No."***

ALLEGATIONS IN *LEDBETTER*

Lilly Ledbetter was an area manager at a Goodyear Tire & Rubber plant for almost twenty years. For most of this time period, salaried employees like Ms. Ledbetter were given or denied raises based on their supervisors' evaluation of their performance. Ms. Ledbetter alleged that relatively early in her career at Goodyear, several supervisors gave her poor evaluations because of her sex. As a result, she alleged her pay was not increased as much as it would have been if she had been evaluated fairly. At the time of her retirement, Ms. Ledbetter was making significantly less money than her male colleagues. In short, Ms. Ledbetter alleged that the discriminatory evaluations of her work early in her career continued to affect her pay throughout her employment with Goodyear.

In 1998, Ms. Ledbetter filed a charge of discrimination against Goodyear with the EEOC. Her sex discrimination claims proceeded to trial and a jury ultimately found in her favor regarding her discriminatory pay claim, awarding her almost four million dollars.

On appeal, the Eleventh Circuit Court of Appeals threw out the jury verdict on the grounds that Ms. Ledbetter's pay discrimination claims were too late. Title VII requires employees to file a charge of discrimination with the EEOC within a short period of time after the alleged discriminatory act occurs—within 180 days or 300 days, depending on the state in which the employee lives (the deadline for Ms. Ledbetter, and for employees in North Carolina, is 180 days). The Eleventh Circuit concluded that the decisions regarding Ms. Ledbetter's pay made early in her career were time-barred because they occurred more than 180 days before she filed her EEOC charge. When the Eleventh Circuit reviewed the timely pay decisions, that is, the pay decisions made within the 180 days before Ms. Ledbetter filed her charge, it concluded no evidence existed that Goodyear had acted with discriminatory intent regarding those decisions. Ms. Ledbetter ultimately conceded this last point.

SUPREME COURT'S REASONING

The Supreme Court agreed with the Eleventh Circuit and held that Ms. Ledbetter's pay discrimination claims were too late. The Court held that a past discriminatory act that is outside the deadline, or charging period, is insufficient, even if the past act has continuing effects within the charging

period. In reaching this conclusion, the Court reasoned and emphasized the following points:

- The key triggering event for bringing a discrimination claim is when a discrete unlawful practice takes place, not when the effects of the practice are felt.

- A discrimination claim under Title VII has two components: 1) an employment practice or decision; and 2) discriminatory intent. Of these two elements, the key is discriminatory intent. Therefore, the employee must be able to demonstrate that discriminatory intent existed during the charging period.

- Ms. Ledbetter did not allege that the early discriminatory decisions regarding her pay were not communicated to her. Therefore, the Court implied she had no excuse for not acting sooner.

- The EEOC filing deadline protects employers from the burden of defending claims arising from employment decisions long-past, and the short deadline evidenced "Congress' strong preference for the prompt resolution of employment discrimination allegations." Evidence relating to discriminatory intent also can fade quickly with time.

The Court also distinguished other cases and fact situations Ms. Ledbetter relied upon to support her position. The Court explained:

- If an employer adopts a facially discriminatory pay structure (such as one in which the employer specifically decides to pay men more than women or decides to pay Americans more than Mexicans), the employer is engaging in intentional discrimination every time it issues a paycheck to a disfavored employee. Such a situation is different from Ms. Ledbetter's, because no evidence existed that Goodyear's pay structure was adopted in order to discriminate based on sex (or any other protected characteristic). Instead, Goodyear's pay structure, based primarily on performance reviews, was facially non-discriminatory and neutrally applied.

- Pay discrimination is not similar to a discrimination claim based on a hostile work environment and therefore, the more relaxed timing rules for filing a hostile work environment claim should not apply. A hostile environment claim involves "a succession of harassing acts, each of which may not be actionable on its own," whereas pay decisions are each independently actionable.

- Discriminatory compensation decisions should not be treated differently from other discriminatory employment acts such as hiring and firing. Ms. Ledbetter argued that the nature of compensation often prevents one employee from knowing what other employees are earning, and the effects of a discriminatory pay-setting decision are often small, incremental, and only realizable after enough time has passed for the employee to perceive a compounded, material difference between her compensation and her co-workers'. The Court rejected this argument because accepting it would both abrogate the intent requirement within the filing period and would result in an employee's ability to file suit against an employer at seemingly any time after a discriminatory pay-setting decision had occurred. Furthermore, the Court concluded that the policy arguments for giving "special treatment" to pay claims were not supported by the language of Title VII or the Court's precedents.

PRACTICAL IMPLICATIONS

The good news for employers is *Ledbetter* has made it more difficult for employees to bring claims of pay discrimination under Title VII because if they do not act quickly, the claim will be time-barred. On the other hand, employees may now decide to pursue discrimination claims whenever they perceive the slightest notion of unequal pay, fearful of losing their ability to seek redress once the filing period has lapsed. Additionally, employees probably will try to "get around" *Ledbetter* by bringing pay discrimination claims pursuant to other statutes, such as the Equal Pay Act or § 1981, which have no administrative prerequisites and thus, longer filing deadlines. Employees probably will also increasingly argue that they were legitimately unaware discrimination was occurring, and as a result, the filing deadlines should be equitably tolled (an argument Ms. Ledbetter did not make).

The dissent in *Ledbetter* openly encouraged Congress to correct what it believed was an incorrect interpretation of Title VII. Congress already has taken some steps in this direction. Thus, Congress may overrule *Ledbetter* and create an exception to allow compensation-based discrimination claims to be brought outside the standard EEOC timeline. ■

409A—New Rules, New Obligations

In 2004, Congress enacted a new IRS Code provision ("409A") intended to curb deferred compensation abuses. The IRS has just finalized the regulations fleshing out 409A, and employers will need to act promptly to achieve compliance before the end of this year. The scope of 409A is very broad, potentially covering any arrangement (with an

employee, director, or independent contractor) that defers the payment of a "vested" right to compensation into another tax year, and could include not only formal deferred compensation plans but also employment agreements, severance agreements, SERPs, stock options, salary continuation agreements, incentive bonuses, change in control payments and other agreements or plans that defer compensation.

The new rules include both documentation requirements (what must be in a written plan) and operational requirements. The latter are particularly sweeping and significantly restrict the ability to modify, accelerate, or defer covered payments or plans. There are also significant exceptions and exemptions to 409A.

The consequences of non-compliance are severe: acceleration of taxation plus interest and a 20% penalty imposed upon the plan participants.

Compliance with 409A will not be simple or subject to a "cookie cutter" approach. Therefore, compliance planning should not be postponed.

Additional information regarding 409A is enclosed with this newsletter and is also posted on our website. ■

New EEOC Guidance Regarding Unlawful Discrimination Against Employees with Caregiving Responsibilities

On May 23, 2007, the EEOC published its "Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities" along with "Questions and Answers" about the Guidance. The Guidance specifically supersedes the previous (1990) EEOC Policy Guidance on Parental Leave. While not formally a "regulation" (to which courts generally give great deference), this policy statement gives insight to the EEOC's investigation and enforcement posture and is a document courts may give some weight in evaluating a claim of discrimination.

The Guidance opens with a general discussion of the increasing role of caregivers, particularly in the "sandwich generation" (age 30-60), who find themselves caring for children and parents. Not surprisingly, there is ample statistical evidence that these duties have fallen disproportionately on females. There is also significant discussion of the disproportionate role women of color play as caregivers in our society.

QUICK ANSWER

ANSWER: Title VII prohibits discrimination against employees because of race, and it applies to employers who have 15 or more employees; however, another law, commonly referred to as § 1981, also prohibits race discrimination, and its only limitation is that the employer be engaged in interstate commerce. Because the interstate commerce standard is lenient, as a practical matter, almost all employers are prohibited from discriminating against employees because of race under federal law.

The Guidance does not create a new protected class (caregivers) or prohibited basis of discrimination, although it should be remembered that such specific protection *is* available under some state's laws (not including North Carolina). Rather, the Guidance is limited to discussions of **disparate treatment**—the theory of discrimination which prohibits treating individuals differently because of their protected status under existing statutes (race, gender, etc.). With that in mind, the majority of the Guidance is not surprising: numerous examples of bias or stereotyping are included, none of which should surprise an experienced human resource professional or attorney—for example, it is illegal to reject women with small children from an executive training program while admitting men with small children, based on assumptions about childcare responsibilities. The Guidance highlights the danger of stereotypes—for example, assuming women with children will not be willing to work overtime—and the dangers of "benevolent" stereotypes—such as, not considering a female with small children for a promotion that would require relocation on the assumption that she would not want to disrupt her childcare arrangements.

The Guidance does not separately address the issues of the Family Medical Leave Act ("FMLA"), which are obviously implicated in many caregiving issues, such as parental leave for care of a newborn or family medical leave for care of a seriously ill family member. This omission is probably due to the fact that the enforcement agency for the FMLA is the US Department of Labor, not the EEOC.

The Guidance reminds employers about the provisions of the Pregnancy Discrimination Act. *See* the EEOC's Guidelines on Discrimination Because of Sex, Employment Policies Relating to Pregnancy and Childbirth, 29 CFR sec. 1604.10. It also reminds employers of the prohibition under the Americans with Disabilities Act ("ADA") of discriminating against any individual who has a relationship with a person with a disability. Thus, discriminating against

an employee because of caregiving responsibilities for a disabled family member would implicate issues under the ADA.

Finally, the Guidance also reminds employers that workplace harassment based on protected characteristics (race, gender, etc.) is equally applicable when members of a protected class who happen to be caregivers are being singled out for harassment whereas caregivers not in that protected class are not.

Interestingly, and without explanation, this Guidance specifically does not address the much thornier issue of application of the **disparate impact** theory of discrimination to this subject. The disparate impact theory, in general, states that a facially neutral rule which has a disparate impact on a protected group must be justified by the employer under a much stricter test (business necessity), regardless of whether the employer intends to discriminate. Given the statistics cited in the Guidance, it seems highly likely that any facially neutral workplace rule based on caregiver status is likely to have a disparate impact against females, and possibly against minority females in particular. We are not aware of any employers using caregiver-based employment rules and would caution any employer considering such a rule to carefully consider the evidentiary burdens of the business necessity doctrine and the provisions of the EEOC's Uniform Guidelines on Employee Selection Procedures, 29 CFR § 1607.

In sum, the Guidance serves to highlight a long-standing problem in the workplace—the competing strains of work and family. The short lesson is: don't rely on assumptions or stereotypes in dealing with employees who are struggling with these issues. ■

Partner Profile

Meet Howard L. Williams, a member of the Brooks Pierce labor and employment team.

Howard advises privately held companies and their shareholders on management incentive plans, employee stock ownership plans, and corporate finance for closely held companies. His practice also includes representation in connection with corporate planning and tax strategies, mergers, acquisitions, joint ventures, complex tax issues, contract negotiation, and document preparation. He represents clients in tax disputes or controversies before the Internal Revenue Service and North Carolina Department of Revenue.

He enjoys working with entrepreneurial clients who have complex issues in retaining executive level employees.

Howard has practiced law since 1972. Prior to joining Brooks Pierce, he worked for the Office of Chief Counsel for the United States Treasury, Washington, D.C., as a tax specialist and litigator. In 1976, he left the District of Columbia to return to his native state, North Carolina. He has practiced continuously with Brooks Pierce since that time.

He is a member of the North Carolina Bar Association Tax Section Council. He also serves as a representative to the Southeastern Liaison Committee to the Internal Revenue Service. He is consistently recognized in Woodward/White's, *The Best Lawyers in America*. In addition, Howard co-authors the North Carolina section of the "Sales and Use Tax Deskbook," published by the American Bar Association.

Howard also is active in professional and community organizations, such as the Executive Board of the Foundation for Greater Greensboro, the Board of Visitors of the Wake Forest University School of Law, and the Greensboro Kiwanis Club. He also has contributed his time to the Boy Scouts of America, the United Way, and to other charitable organizations.

He received his undergraduate degree from North Carolina State University in Economics (with honors), a *Juris Doctorate* from Wake Forest University School of Law (*cum laude*), and a Masters of Law in Taxation from George Washington University (with highest honors).

Howard is an avid golfer and enjoyed working in the 2005 U.S. Open. He resides in Greensboro with his wife Cindy. He has two children, a daughter and a son.

You can reach Howard at (336) 271-3113 or via e-mail at hwilliams@brookspierce.com.

Firm Corner

Appointments

Bill Cary has been elected Chair of the Board of Trustees of the North Carolina School of Science and Mathematics.

Kyle Woosley has been elected for a three-year term to the Board of Directors of Legal Aid of North Carolina (LANC).

Bill McNairy has been selected to serve as a member of the Board of Directors of the North Carolina Chamber.

Bob Singer has been elected Vice-Chair of the Board of Directors and Chair of the Executive Committee of Hand Held Products, Inc., an imaging and data solutions company headquartered in Skaneateles Falls, New York.

Bob Saunders has been appointed as a member of the Endowment Committee of the North Carolina Bar Association Foundation, Inc.

Phillip Long has been appointed as a Board Member of the Greensboro Opera Company.

Other

Brooks, Pierce, McLendon, Humphrey & Leonard, LLP has launched a redesign of its website at www.brookspierce.com.

Former North Carolina Supreme Court Chief Justice ***Henry E. Frye*** received the John J. Parker Award at the 109th North Carolina Bar Association Annual Meeting held in June. The John J. Parker Award is considered the highest honor awarded by the NCBA. Justice Frye serves as of counsel to Brooks Pierce.

Randy Underwood and ***Ben Davis*** were featured speakers at the North Carolina Bankers Association's annual Deposit Accounts Clinic held in Durham, North Carolina.

Jennifer Van Zant and ***Reid Phillips*** were speakers at the 109th North Carolina Bar Association Annual Meeting held in June.

Kearns Davis has rejoined the firm as partner after serving for four years as an Assistant United States Attorney for the Middle District of North Carolina. He now leads the firm's practice in the areas of white-collar criminal defense, federal criminal trials and appeals, grand jury proceedings, government investigations, and internal investigations. Davis will also represent businesses and individuals in a wide variety of commercial, civil, and fraud-related disputes and litigation.

Katherine Abigail "Abby" Soles has joined the firm as an associate. Soles is a graduate of the University of Virginia School of Law (J.D., 2005) where she served as Articles Editor of the *Virginia Journal of International Law* (2004-05). She received her undergraduate degree from Duke University (B.A., *cum laude*, 1999). Prior to joining Brooks Pierce, Soles served as Law Clerk to the Honorable Chief Judge N. Carlton Tilley, Jr., United States District Court for the Middle District of North Carolina, 2005-06.

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