

GUNSHANNON, ET AL. V. ALBERT/CAROL MUELLER T-A McDONALDS, ET AL.

EXPERT REPORT OF STEPHEN G. HARVEY

I have been engaged as an expert witness by counsel (Caroselli Beachler McTiernan & Conboy, L.L.C.) for Natalie Gunshannon and other similarly situated persons (collectively “Plaintiffs”) in their suit against McDonald franchises owned or controlled by the Albert and Carol Mueller Limited Partnership and/or Albert and Carol Mueller (“McDonalds” or “Defendants”). At issue here is whether payment of employee wages exclusively by payroll card subject to fees is consistent with Pennsylvania law, including the Pennsylvania Wage Payment and Collection Law (“WPCL”), 43 P.S. §§ 260.1-260.13.

I. BACKGROUND

A. The Complaint

Plaintiffs brought this class action suit against Defendants, a company owning McDonalds restaurants, by current and former McDonalds’ employees who were paid wages through a JP Morgan Chase Payroll Card (“Payroll Card”). See Am. Compl. ¶ 1, 29. Plaintiffs allege that McDonalds required them to receive their employment wages exclusively through the Payroll Card. See Am. Compl. ¶ 7-8, 10. Plaintiffs allege that they incurred fees through use of the Payroll Card to obtain their wages. See Am. Compl. ¶ 11-13. They seek reimbursement for these fees and allege that McDonalds has violated the WPCL. See Am. Compl. ¶ 14, 73.

B. The Payroll Card

Defendants gave Plaintiffs no choice to receive their employment wages in cash, check, or direct deposit, but instead required them to receive their wages by Payroll Card. In the Card Issuance Agreement dated August 30, 2010, the Defendants agreed with JP Morgan Chase that the use of the Payroll Card by Defendants' hourly employees would be subject to the fees set forth in Exhibit A to the Agreement. Those fees included an over the counter withdrawal fee of \$5 after one free withdrawal, an ATM withdrawal fee of \$1.50 per withdrawal, a balance inquiry fee of \$1, and a paper statement fee of \$1.

JP Morgan actually charged the fees. In fact, employees who use the Payroll Card frequently incur fees. In a notice of removal that JP Morgan Chase recently filed in another action, it disclosed that from November 2010 to July 2014, Defendants' hourly employees were charged fees by JPMorgan Chase on approximately 46,700 occasions.

Unlike hourly employees, Defendants' managers were given the option of receiving their wages through direct deposit. See Am. Compl. ¶ 69. Paul Curran, Defendants' corporate designee, conceded that while hourly employees were not given an option of how to receive their pay, "both supervisors and managers had the options of a paper check or direct deposit." Curran Dep. 65:16-66:7. He also testified that Defendants gave the option of direct deposit to these employees as a "reward" for their time of service. Curran Dep. 64:9-15.

C. The WPCL

The WPCL mandates that, “wages shall be paid in lawful money of the United States or check, except that deductions provided by law, or as authorized by regulation of the Department of Labor and Industry for the convenience of the employee, may be made including deductions of contributions to employee benefit plans which are subject to [ERISA].” 43 P.S. § 260.3(a) (1961). The Department of Labor and Industry has the power to make rules and regulations under the WPCL and it has done so at Title 34 of the Pennsylvania Code, Chapter 9, including deductions “authorized for the convenience of employees” at section 9.1. None of these authorized deductions is for fees on payroll cards.

The Pennsylvania Banking Code (“Banking Code”) states:

For the purposes of any statute, rule or regulation requiring any payment to be made in lawful money or by check, whether for wages, salaries, commissions or other claims of any kind, such payment may be made by credit to an account in a bank, credit union or other financial institution authorized to accept deposits or payments designated by the recipient of such payment if the recipient has requested such method of payment in writing.

7 P.S. § 6121 (1975). The Banking Code also requires that every such request set forth all terms and conditions of such transfers and the method that a wage earner may terminate such an agreement. See 7 P.S. § 6122.

The current text of the WPCL was last amended in 1977. Prior to this amendment, section 260.3(a) read as follows:

Every employer shall pay all wages due to his employees on regular paydays designated in advance by the employer. Overtime wages may be considered as wages earned and payable in the next succeeding pay period. All wages earned in any pay period shall be due and payable

within the number of days after the expiration of said pay period as provided in a written contract of employment or, if not so specified, within the standard time lapse customary in the trade or within 15 days from the end of such pay period. *The wages shall be paid in lawful money of the United States or check*, except that deductions provided by law, or as authorized by regulation of the Department of Labor and Industry for the convenience of the employee, may be made including deductions of contributions to employees' welfare and pension plans which are subject to the 'Federal Welfare and Pension Plans Disclosure Act.'

43 P.S. § 260.3(a) (amended 1977) (emphasis added). As emphasized, the language “[t]he wages shall be paid in lawful money of the United States or check” was not altered when the statute was amended.

Research has been unable to discover any legislative history discussing the meaning of the words “lawful money of the United States,” as used in the WPCL, but the phrase has a well-established meaning under the Federal Reserve Act, 12 USC § 411. “In 1933, Congress changed the law so that all U.S. coins and currency (including Federal Reserve notes), regardless of when issued, constitutes ‘legal tender’ for all purposes. Federal and state courts since then have repeatedly held that Federal Reserve notes are also ‘lawful money.’” See What is lawful money? How is it different from legal tender?, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM (Aug. 2, 2013), http://www.federalreserve.gov/faqs/currency_15197.htm; See also Milam v. U.S., 524 F.2d 629 (9th Cir. 1974) (citing Juilliard v. Greenman, 110 U.S. 421, 448 (1884)).

The Pennsylvania Supreme Court, prior to the enactment of the Wage Payment and Collection Act, accepted the U.S. Supreme Court’s conclusion that

Federal Reserve notes qualify as legal tender, and therefore lawful money. See Pa. R.R. Co. v. Cameron, et al., 124 A. 638, 639 (Pa. 1924). In short, lawful money means Federal Reserve notes and coins. It does not include innovative payment technologies, such as payroll cards.

The WPCL provides for a definition of “check.” It defines a “check” as “[a] draft drawn on a bank and payable on demand.” 43 P.S. 260.2a. A draft is a “written order for the payment of money” See THE OXFORD ENGLISH DICTIONARY, <http://www.oed.com/view/Entry/57398?rskey=RA850F&result=1#eid>; see also MERRIAM-WEBSTER’S DICTIONARY OF LAW 151 (1996) (“an order for the payment of money drawn by one person or bank on another ... compare CHECK.”). This is consistent with the definition of “order” under the Uniform Commercial Code (“UCC”). See 13 P.S. § 3103(a) (defining “order” as “[a] written instruction to pay money signed by the person giving the instruction.”).

The WPCL does not define the phrase “payable on demand,” but it too has a well-established meaning under the law. See 13 P.S. § 3108(a) (1992) (“A promise or order is ‘payable on demand’ if it: (1) states that it is payable on demand or at sight or otherwise indicates that it is payable at the will of the holder; or (2) does not state any time of payment.”). Payable on demand “is an unconditional agreement to pay a sum certain on demand” First Nat’l Bank v. Bartlett, 35 Pa. Super. 593, 1908 Pa. Super. LEXIS 87 (Pa. Super. Ct. 1908). See also Cook v. Carpenter, 212 Pa. 165, 61 A. 799, 1905 Pa. LEXIS 576 (Pa. 1905) (“The obligation to pay in such case is absolute and present; the only element not fixed with certainty is the time of

payment, and as that is at the option of the creditor, and the debtor must be prepared *eo instanti*, the time of payment, and with it the statute, begins to run at once.”).

To date, there are two bills in the Pennsylvania General Assembly that seek to amend the WPCL to clarify this issue regarding the use of payroll cards. One of these bills provides for a definition of payroll cards and prohibits payment of wages through them entirely. See H.B. 1814, 197th Gen. Assemb., 2013 sess. (Pa. 2013). The other would amend the text to specifically provide for the payment of wages through payroll cards and direct deposit with specific requirements for each method. See H.B. 2274, 198th Gen. Assemb., 2014 sess. (Pa. 2014). Neither of these bills has been enacted into law.

II. BASIS FOR ANALYSIS

The analysis and opinions in this report are based primarily upon the documentation available to date and my independent research, education, and experience in the fields of commercial law and banking, including consumer financial services. From approximately 2000 to 2013, I concentrated my law practice in the area of financial services, including primarily consumer financial services, and I still work in this area. I have been active for many years in the American Bar Association, Section of Business, Committee on Consumer Financial Services, including four years on the leadership of the Committee, as well as the Committee on Banking. I have represented and advised many banks and other clients on matters involving state and federal consumer financial laws, including the laws

governing reloadable cards, including payroll cards. To my knowledge, however, I never advised or represented any clients specifically on the use of a payroll card. Information about my background as a lawyer and my work in the area of consumer financial services is set forth in my attached curriculum vitae.

I examined the following documents in preparing this report:

- Amended Complaint
- Answer to Plaintiffs' Complaint
- Plaintiffs' Motion for Class Certification
- Memorandum of Law in Support of Plaintiffs' Motion for Class Certification
- Letter to Michael J. Cefalo from Matthew J. Hank dated July 31, 2014
- Amended Responses to Defendants' Responses to Plaintiffs' First and Third Sets of Interrogatories
- Paycard Start Dates by Restaurant
- Card Issuance Agreement
- Paycard Schedule of Fees
- Paycard Welcome Pamphlet
- Expert Reports by Stephen J. Scherf, CPA, CFF, CFE
- Deposition of Paul Curran
- Letter from American Payroll Association dated September 28, 2009
- Consumer Financial Protection Bureau Bulletin 2013-10 dated September 12, 2013
- Letter dated October 31, 2012 from Peter Von Getzie, Assistant Counsel, Commonwealth of Pennsylvania, Governor's Office of Attorney General
- Pennsylvania General Assembly House Bill 1814
- Pennsylvania General Assembly House Bill 2274
- JPMorgan Chase & Co.'s and JPMorgan Chase Bank, N.A.'s Joinder in and Notice of Additional Grounds for Removal, filed in *King v. Albert and Carol Mueller*, C.A. No. 14-01641 (M.D. Pa.) (Doc. 4).

III. ANALYSIS

I have been asked to provide an opinion regarding whether Pennsylvania law authorizes an employer to pay employees exclusively by payroll card subject to fees without offering the option of an alternative payment method, as happened on the facts of this case.

I begin with a review of the words of the WPCL. See Barnhart v. Sigmon Coal Co., 534 U.S. 438, 461-462 (2002) (citing Connecticut Nat. Bank v. Germain, 503 U.S. 249, 253–254 (1992)) (“We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’”); Hannaberry HVAC v. Workers’ Comp. Appeal Bd., 834 A.2d 524, 531 (Pa. 2003) (“When the words of a statute are clear and free from all ambiguity, they are presumed to be the best indication of legislative intent.”).

The words of the WPCL are unambiguous. Wages must be paid in “lawful money of the United States,” or by “check.” The Banking Code provides for direct deposit as a third option.

Payroll cards clearly do not qualify as lawful money, because they are neither Federal Reserve notes nor coins. They also clearly do not qualify as direct deposit, because the wages do not go into a bank account designated by the employee.

Payroll cards also clearly do not qualify as checks. In common parlance, a check is a piece of paper authorizing payment of money and signed by the person making the payment. When the legislature enacted the WPCL in 1961, payroll cards were unheard of and the WPCL has not been amended since 1961 on this issue. It is simply too great a leap of statutory construction to assume that the legislature meant for the word “check” to include a payment mechanism not in existence at the time, particularly when, as explained below, the payment

mechanism does not function like a check, is subject to deductions not authorized under the WPCL, and is not payable on demand. This conclusion is reinforced by the two bills in the Pennsylvania legislature on this point; those bills would be unnecessary if payroll cards already qualified as checks.¹ When and how payroll cards are permitted as a form of payment in Pennsylvania are policy questions to be addressed by the legislature.

The Payroll Cards at issue do not function like checks for several reasons. They cannot be deposited into the employee's bank account. For many employees, that means as a practical matter that the most convenient way to access the wages is by ATM, which means a fee. They are subject to fees, which is inconsistent with the obvious purpose and design of the WPCL, which is for employees to receive all of their wages without any deductions except those authorized "for the convenience of the employee" as set forth in the regulations. None of these authorized deductions includes fees on payroll cards.

Payroll cards subject to fees are not payable on demand. Payable on demand means that the entire amount is due right then, with no conditions. For these reasons, it is very clear that the payroll cards at issue would not qualify as payment

¹ Other states have amended their wage payment statutes to include payroll cards. For example, Florida Statute § 532.01 was amended in 2009 to include payroll cards as a permissible form of wage payment, provided that the instrument is negotiable and payable in cash, on demand, without discount, at an established place of business in the state, the name and address of which must appear on the instrument or in the payroll debit card issuing materials.

by check and in fact are an unauthorized and therefore illegal form of payment of wages under Pennsylvania law.²

It is immaterial that employees can and some undoubtedly do receive all of their wages without any fees either by making one-time, lump-sum, over-the-counter withdrawals or point-of-sale transactions. The issue is not whether it was possible to use the Payroll Card without incurring fees, but rather whether the use of the Payroll Card is authorized under Pennsylvania law. Clearly it is not. The Defendant's hourly employees were forced to accept a payment mechanism that functioned differently from cash, direct deposit, or a check, and that in some highly predictable and likely circumstances (such as the need to make an ATM withdrawal for the sake of convenience) cause the employees to accept deductions in their wages. This is plainly inconsistent with the WPCL; employers cannot force their employees to accept less than all of their wages.

The information disclosed by JP Morgan Chase in the recent notice of federal court removal in King v. Albert and Carol Mueller, C.A. No. 14-01641 (M.D. Pa.), provides concrete evidence of why Defendants cannot hide behind the argument that because there is a way for employees to get their wages without fees the Payroll Card should be permitted. For just the relatively small business operation operated by Defendants (a chain of sixteen McDonalds restaurants) in a period of

² They are also unauthorized under federal law. According to the federal Consumer Financial Protection Bureau, Regulation E, which implements the Electronic Funds Transfer Act (the "EFTA"), employers are prohibited from mandating that employees receive wages only on a payroll card of the employer's choosing. See CFPB Bulletin 2013-10 (Sept. 12, 2013); Payroll Management Guide issue no. 2321, no. 1401 (Sept. 17, 2013).

under four years the hourly employees incurred fees on tens of thousands of occasions. This also demonstrates the magnitude of the issue and the importance of deferring to the legislature.

Finally, the specific facts of this case present another compelling reason why the Payroll Card could not possibly qualify as a means of payment authorized by Pennsylvania law. The Defendants gave their employees at the manager and supervisor level the option of being paid by paper check or direct deposit, but denied these options to the hourly employees, because they wanted to “reward” the managers and supervisors. I can conceive of no reason why any employee receiving his or her justly earned wages, as required by law, should be deemed a reward. Moreover, this grossly unfair and blatant discrimination against hourly employees proves that there is a real difference between the Payroll Card, on the one hand, and check or direct deposit, on the other hand.

IV. CONCLUSION

Based on my review of the law as discussed above, it is my opinion, within a reasonable degree of professional certainty, that the Payroll Card does not qualify as lawful money of the United States or check as required by the WPCL and is not equivalent to direct deposit as provided for in the Banking Code. The fact that managers and supervisors were paid through direct deposit or check further demonstrates that the Payroll Card is not the equivalent of lawful money, check, or direct deposit.

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Dated: September 2, 2014

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LEGAL EXPERIENCE

Steve Harvey Law LLC-Philadelphia, PA
Principal/Owner, December 2013-present

- Boutique litigation and trial law firm concentrating on business disputes and complex litigation matters, including commercial litigation, banking and finance, civil rights, intellectual property, and employment law. Firm description available at www.steveharveylaw.com.

Pepper Hamilton LLP-Philadelphia, PA
Partner, 2000-present
Associate, 1995-2000

- Significant experience representing clients in litigation and at trial, managing teams of lawyers and legal assistants, and advising on litigation avoidance, risk management, and legal compliance.
- Lead or co-counsel on numerous litigation /trial matters. Noteworthy cases include:
 - *Murnaghan v. Sebelius* (E.D. Pa.) (successfully represented the parent of then 10-year-old Sarah Murnaghan in lawsuit seeking a TRO to prevent discrimination in the national system for allocating lungs)
 - *Kitzmiller v. Dover Area School District* (M.D.Pa.) (successfully prosecuted First Amendment action to enjoin school district from presenting “intelligent design” as alternative to the theory of evolution in public school science class) (reported at 400 F.Supp.2d 707);
 - *Mwantembe v. TD Bank, N.A.* (E.D. Pa.) (successfully defended class action law suit alleging that national bank’s gift card program violated state unfair and deceptive trade practices act; summary judgment granted in part on federal preemption grounds and class certification denied) (reported at 669 F.Supp.2d 545 and 268 F.R.D. 548); and
 - *Smith v. Chrysler Financial Co.* (D. N.J.) (successfully defended disparate impact class action against automobile finance company; summary judgment granted on standing and motion for class certification denied as moot) (reported at 2004 U.S. Dist. Lexis 28504).

- Numerous publications and presentations on subjects related to litigation and trial practice as well as substantive legal topics.
- Areas of significant litigation, trial, and counseling experience include:
 - *Business disputes* -- breach of contract, fraud, insurance coverage, and business torts.
 - *Products liability* -- defense of automobile and pharmaceutical product design, labels, and warnings.
 - *Employment matters* -- employee non-compete and confidentiality provisions, workplace defamation, fiduciary duties, discrimination.
 - *Intellectual property* -- non-competition provisions, trade secrets, trade libel, and trademark/copyright/patent infringement.
 - *Banking and financial services* -- unfair and deceptive trade practices act claims, fair lending, federal preemption, arbitration clauses, lender liability, interest rate exportation, Equal Credit Opportunity Act and other federal statutes, and Dodd-Frank Title X (Consumer Financial Protection Bureau).
 - *Civil litigation* -- class actions, multi-district litigation, TROs and preliminary/permanent injunctions, arbitration, e-discovery, corporate investigations, and trial practice.

Crowell & Moring LLP-Washington, DC
Associate, 1993-1995

- Handled commercial litigation and insurance coverage matters.

U.S. Department of Justice, Civil Division, Federal Programs Branch-Washington DC
Trial Attorney, 1990-1993

- Entered through the Honors Program. Represented various federal agencies in litigation matters, including trials, hearings, and arguments.

Hon. Myron H. Bright, U.S. Court of Appeals 8th Circuit-Fargo, ND
Law Clerk, 1989-90

EDUCATION

Villanova University School of Law, J.D. 1989 *magna cum laude*
Managing Editor, Villanova Law Review
Recipient, Hyman-Goodman Faculty Award for Academic and Extracurricular Achievement
Member, National Moot Court Championship Team

University of Massachusetts at Amherst, B.A. 1982 (Political Science)

SELECTED PROFESSIONAL ACTIVITIES

Homeless Advocacy Project-Philadelphia, PA

President, 2013

Board Member, 2006-present

Temple American Inn of Court-Philadelphia, PA

Member, 1999-2008, 2010-present

American Bar Association, Section of Business, Committee on Consumer Financial Services

Member, 1999-present

Chair (2007-09), Vice-Chair (2003-07), Subcommittee on Litigation and Arbitration

Philadelphia Court of Common Pleas Trial Division-Philadelphia, PA

Judge Pro Tempore, 2010-present

Serve as a court-appointed mediator

HONORS

Villanova University Law School Alumni Association Public Service Award (2014)

William R. Klaus Pro Bono Award, presented by Pepper Hamilton LLP (2011)

Clarence Darrow Award, presented by National Center for Science Education (2006)

Pennsylvania Bar Association Pro Bono Award (2006)

JURISDICTIONS ADMITTED TO PRACTICE

Commonwealth of Massachusetts

Commonwealth of Pennsylvania

District of Columbia

COURTS ADMITTED TO PRACTICE

United States Supreme Court

U.S. Court of Appeals for the Third Circuit

U.S. Court of Appeals for the Eighth Circuit

U.S. District Court for the District of Columbia

U.S. District Court for the Eastern District of Pennsylvania

U.S. District Court for the Western District of Michigan

U.S. Court of Federal Claims

ARTICLES

DC Circuit Sides with Federal Reserve Board on Meaning of Durbin Amendment to Dodd-Frank Act, *ABA Business Law Section Banking Law Committee Journal* (April 2014) (with co-author)

Consumer Financial Protection Bureau Tells Supervised Institutions Not to Worry About Waiver of Privilege, *Financial Fraud Law Report* (April 2012) (with co-authors)

Supreme Court in Wal-Mart Stores, Inc. v. Dukes Rejects Certification of Largest Gender Discrimination, Employment Class Action in Nation's History, Holds Plaintiffs Cannot Prove Common Class Claims, Raises Bar for Certification of All Claims, *Appellate Law360*, *Employment Law360*, *Class Action Law360* (June 2011) (with co-authors)

Defending Darwin, *GPSOLO*, September 2011 (28:6) (with co-author) (this is a condensed version of the next article)

Defending Darwin, *Litigation*, Fall 2010 (37:1) (with co-author)

Another Federal Circuit Knocks Out Class Action Waiver Provision in Arbitration Agreement Based on Public Policy Under Federal Antitrust Laws, *Consumer Finance Law Quarterly Report* (Fall-Winter 2008) (with co-authors)

What Every Client and Lawyer Should Know About E-Discovery, *Consumer Finance Law Quarterly Report* (Fall 2007) (with co-author)

Enforcing the Non-Compete and Confidentiality Duties of High Level Executives, *1998 Employment Law Update* (Aspen Law & Business 1998)

The Pattern Requirement in Civil RICO is Working: Case law After Sedima, 33 Vill. L. Rev. 205 (1988)

CLIENT ALERTS¹

The Consumer Financial Protection Bureau Celebrates First Birthday By Flexing Its Enforcement Muscles: Settlement Costs Capital One \$210 Million (2012) (with co-author)

CFPB Issues Proposed Rule on Privileged Information Obtained from Supervised Entities and House Passes Bill that Would Authorize It, But Concern Remains About Erosion of Attorney-Client Privilege (2012) (with co-authors)

Disparate Impact Claims Under Fair Housing Act Remain Viable as Case Is Removed from Supreme Court Docket (2012) (with co-authors)

¹ All clients alerts were published on www.pepperlaw.com

Fair Housing Act Disparate Impact Case Pulled from Supreme Court Docket (2012) (with co-authors)

Overhauling the Federal Jurisdictional Statutes (2012) (with co-authors)

Third Circuit Adopts the 'Later-Served' Rule for Determining Timeliness of Notice of Removal (2011) (with co-authors)

Third Circuit Holds that Supreme Court Decision in AT&T Mobility LLC v. Concepcion Invalidates New Jersey Supreme Court Decision that Required Arbitration of Claims on a Class-Wide Basis (2011) (with co-authors)

In Narrowly Construing 'Relitigation Exception' to Anti-Injunction Act, Supreme Court Holds District Court Had No Authority to Enjoin State Court Class Action Proceedings Unless Parties and Claims Were Identical to Those Previously Denied Class Status (2011) (with co-authors)

The More Things Change the More They Stay the Same: OCC Issues Notice of Proposed Rule on National Bank Act Preemption and Claims It Was Right All Along (2011) (with co-authors)

Supreme Court Upholds Class Action Waiver Provisions in AT&T Mobility LLC v. Concepcion (2011) (with co-authors)

Second Circuit Invalidates Class Action Waiver Provision (Again) on Public Policy Grounds Under the Antitrust Laws (2011) (with co-authors)

Pennsylvania Supreme Court Declares Attorney-Client Privilege in Pennsylvania a Two-Way Highway Rather Than a Narrow One-Way Street (2011) (with co-author)

Ninth Circuit Rejects Ratner Defense in \$290 Million FACTA Class Action (2010) (with co-author)

Amendments to Federal Rules of Civil Procedure to Take Effect on December 1, 2010 (2010) (with co-author)

Supreme Court Poised to Decide Critical Case Concerning Arbitration Clauses in Consumer Contracts: Does the Federal Arbitration Act Preempt Claims Challenging Class Waivers as Unconscionable? (2010) (with co-author)

Pennsylvania Supreme Court (with the Help of Strunk and White) Effectively Pulls the Plug on Internet Payday Lending in Pennsylvania (2010) (with co-author)

How the Dodd-Frank Act Affects Preemption of State Consumer Financial Laws: A Primer on Subtitle D of Title X (2010) (with co-author)

Eleventh Circuit Reverses Controversial Class Action Decision: Holds That Jurisdiction Under Class Action Fairness Act Does Not Require That Any Plaintiff Meet the Minimum \$75,000 Amount in Controversy (2010) (with co-authors)

Eleventh Circuit Decision Threatens to Send More Class Actions Back to State Court (2010) (with co-authors)

Comprehensive Financial Reform Legislation Becomes Law (2010) (with co-authors)

Supreme Court Holds that Arbitrator, Not Court, Must Decide Whether Arbitration Agreement Is Unconscionable (2010)

Senate Passes Financial Services Reform Bill (2010) (with coauthors)

Third Circuit: Courts (Not Arbitrators) Must Decide Whether Claims Should Be Arbitrated on Individual or Class Basis (2010) (with coauthor)

Supreme Court Rejects Class-Action Arbitration Absent Consent, But Congress and Regulators May Have Final Say (2010) (with co-author)

Federal Rule 23 Trumps New York Statute Limiting Class Actions (2010) (with co-author)

Federal Reserve Board Issues Final Rule on Gift Cards (2010) (with co-authors)

Federal Reserve Board Proposes Restrictions on Gift Cards (2010) (with co-authors)

For Civil Litigators, Imminent Federal Rules Amendments Affect Timing of Due Dates (2009)

Court Denies Complete Preemption for State-Chartered Banks (2009) (with co-authors)

Supreme Court Approves State Actions Against National Banks, Rejects OCC Rule (2009) (with co-authors)

Courts Rule on CAFA Amount in Controversy Requirement, but Disagreements Remain (2009)

Congress Passes and President Signs Important New E-Discovery Law (2008) (with co-author)

U.S. Supreme Court Holds that Victim of Unlawful RICO Scheme to Defraud Need Not Prove Reliance on Predicate Acts of Mail Fraud to State a Claim (2008)

Congress Kills Many Credit Card Class Actions Under the FACT Act (2008) (with co-author)

Philadelphia Judge Reforms Mortgage Foreclosure Process; Takes Moderate Path (2008)

Supreme Court Explains 'Willfulness' Standard Under FCRA (2007) (with co-author)

NJ Supreme Court Condemns Class Action Waiver in Consumer Loan Contract Dispute Involving Low Value Claim (2006) (with co-author)

Arbitration Developments (2006) (with co-author)

California Court Kills Class Waiver Clause in Consumer Contract (2005) (with co-author)

Supreme Court 'Disparate Impact' Decision Has Implications for Financial Services Companies (2005) (with co-author)

Continuing a Centrist Approach to Legal Issues (2005) (with co-author)

What the Class Action Fairness Act Means to You (2005) (with co-author)

Arbitration Developments (2004) (with co-author)

Class Action Fairness Act Killed in Senate (2004)

Non-Compete and Trade Secrets Update (2004) (with co-author)

Fair Lending and Auto Finance: Is There a Case for Discrimination? The Answer Is Clearly No (2004)

Financial Services Update - March 2004 (2004) (with co-authors)

Federal Rules of Civil Procedure Took Effect December 1, 2003 (2004) (with co-author)

Financial Services Litigation and Class Action Report - January 2004 (2004) (with co-authors)

Earning a Reputation for Pragmatism: 2003 Review of Third Circuit Court of Appeals (2003) (with co-author)

Litigation and Class Action Report - July 2003 (2003)

Financial Services Update - May 2003 (2003) (with co-author)

Court: Creditor/Assignee Can Be Liable for Any Claims a Consumer Can Assert Against the Seller Under a Consumer Credit Contract (2003)

Court Gives Green Light to RESPA Class Actions (2001)

Decision in the Green Tree Case a Victory for Lenders and Borrowers (2001)

Federal Court in Delaware Invalidates Mandatory Arbitration Clause Under TILA; Also Rules Interest Rate May Be Unconscionable (2000) (with co-authors)

SELECTED SPEECHES AND PRESENTATIONS

<u>Date</u>	<u>Event</u>	<u>Location</u>	<u>Summary</u>
4/2/04	ABA Section of Business Spring Meeting	Seattle, WA	Panel presentation entitled “Fair Lending and Auto Finance: Is There a Case for Discrimination? The Answer Is Clearly No.”
2/9/07	Pepper Hamilton Webinar	Internet	Webinar entitled “The Practical Aspects of E-Discovery.”
3/15/07	ABA Section of Business Spring Meeting	Washington, DC	Panel presentation entitled “E-Discovery Update for Consumer Financial Services Lawyers.”
8/16/07	Pennsylvania Bar Institute	Philadelphia, PA	Presentation on e-discovery.
10/17/07	District of Columbia Bar Association	Washington, DC	Panel presentation on the subprime mortgage crisis.
7/23/09	Pepper Hamilton Webinar	Internet	Webinar entitled “The Consumer Financial Protection Agency Act: What Does It Mean to You?”
7/15/10	Pepper Hamilton Webinar	Internet	Webinar entitled “What the Financial Reform Legislation Means for You.”
10/26/10	Pepper Hamilton Webinar	Internet	Webinar entitled “A Closer Look at the Dodd-Frank Act - The Consumer Financial Protection Bureau.”
4/7/11	Delaware Valley Corporate Counsel Association	Philadelphia, PA	Panel presentation entitled “Selected Issues in the World of Social Media.”
4/14/11	ABA Section of Business Spring Meeting	Boston, MA	Panel presentation entitled “Litigation and Dodd-Frank – Possible Effects on Consumer Litigation.”
6/14/11	Pepper Hamilton Webinar	Internet	Webinar entitled “What's Your Status? Legal Risks of Social Media in the Workplace.”
8/2/11	Federal Trade Commission Roundtable	San Antonio, TX	Panel presentation on fair lending in the automobile finance industry entitled “Fair Lending – Compliance, Risk and Liability.”

10/13/11	Pepper Hamilton Webinar	Internet	Webinar entitled "Preparing for the New Wave of Government Enforcement Activity in Financial Services."
2/7/12	Lorman Education Services Webinar	Internet	Webinar entitled "Mastering the Science of Cross Examination."
11/14/12	Pepper Hamilton Webinar	Internet	Webinar entitled "Is the Attorney-Client Privilege Under Attack by the CFPB?"
1/6/13	ABA Section of Business, Committee on Consumer Financial Services	Naples, FL	Panel presentation entitled "UDAAP in the Age of the CFPB."
1/23/2014	American Health Lawyers Association	Washington, DC	Organ Allocation Meets the Judicial System: Thoughts on the Sarah Murnaghan Lung Allocation Case.
4/23/14	Pennsylvania Bar Institute	Philadelphia	Panel Presentation entitled "Effective Depositions of Financial and Economic Experts"
5/16/2014	Southern Illinois Healthcare/Southern Illinois University	Carbondale, Illinois	Organ Allocation Meets the Judicial System: Thoughts on the Sarah Murnaghan Lung Allocation Case.
6/4/14	Philadelphia Bar Association	Philadelphia	Panel Presentation entitled "Making the Private Practice Leap"
7/23/14	Pennsylvania Bar Institute	Philadelphia	Demonstration of direct and cross examination techniques as part of program entitled "Trial of a Federal Court Case"