The Pennsylvania Lemon Law was created to protect consumers who lease, purchase and register a new vehicle in the state of Pennsylvania. In Pennsylvania, a car may qualify as a lemon if a defect or condition that substantially impairs the use, value or safety of the vehicle is reported to a dealer within the first 12 months or 12,000 miles (whichever occurs first), and the vehicle requires more than three attempts to repair the defect or the vehicle is out of service for 30 days or more for any number of defects or conditions. See 73 P.S. § 1954-55.

My clients have often been either turned away or scuttled out of the dealership after the dealership and/or car manufacturer is notified that there is a problem with a vehicle. Often, the dealerships either do not want to acknowledge there is a problem, do not want to fix the problem or do not understand how to actually fix the problem with my client’s vehicle.

There are also some deceptive dealerships that will attempt to fix the problem, but once they see there is an attorney actively attempting to lemon the client’s vehicle, they will stop working on the vehicle and turn my client away. To that point, ascertaining the current status of your client’s vehicle is of the utmost importance. Additionally, here is a list of practice tips to assist you if you find yourself in a situation needing to assist a client with a Lemon Law claim:

1. Collect all relevant documentation

Documentation and evidence on these claims is vital and a young attorney should be prepared with the evidence supporting the client’s claim before going to court. Obtain as much evidence as possible with regard to your client’s vehicle repairs before your court appearance. We routinely utilize the repair orders and sometimes utilize independent inspectors to help prove our claims. It is vital to see that the dealership is actually documenting your client’s complaints. In order to avoid the three-repair-attempt requirement, some dealerships will not mark down the client’s problems or will mark down a similar tangential issue so that they can later argue in court it is not the same issue.

Some dealerships may refuse to hand over your client’s paperwork, and almost all manufacturers will refuse to aid in obtaining your client’s paperwork. I usually pen a certified letter and demand on the manufacturer and dealership requesting any and all paperwork and then noteate that demand within my client’s complaint. I subsequently add the letter as an exhibit attached to the complaint.

2. Be cognizant of factors outside of your client’s vehicle

Depending on the state in which you practice, your claim may have an extremely short statute of limitations. Fortunate-
Lemon

Continued from page 1

ly, in the event that you are not eligible for the Lemon Law deadline, most of these claims can be brought as a breach of warranty claim under the Uniform Commercial Code.

Further, it is also helpful to understand the “big picture” of what is going on with your client’s vehicle. Lawyers are not mechanics and cannot be expected to know the ins and outs of a defective vehicle. However, we can easily ascertain whether a certain vehicle is prone to defects to the point where the manufacturer has already taken action—i.e., recalls. In my practice, I routinely see the same vehicle models appear as the subject of litigation. Sometimes, the prevalence of these defects can lead to class action lawsuits.

If there is a class action lawsuit, you must act timely, as there are certain options that may be at stake within a short window of time; failure to act may bind your client to unfavorable settlement terms. There may be a current class action lawsuit pending and you need to determine what the deadline is for opting-out. Even if you are past the deadline, you may likely still want to attempt to opt-out so that you may preserve argument. Your client often may not want to be included in any class action settlements. Often, the class action settlement payouts may be lower than what your client may attempt to recover on his/her own.

3. Listen to your client

Claims under the Lemon Law also require “street smarts” when doing your research. Talk to your client. If your client has a bad feeling about the dealership, tell your client to go with his/her gut and take the vehicle to another dealership that will accurately document his/her concerns and the claim. If your client decides to stick with the same dealer, monitor the situation to assess whether there are any deceptive practices being performed by the dealership. If these deceptive practices can be proven in court, your client may be afforded heightened damages on his/her claim.

Young lawyers right out of school sometimes fail to listen to their clients and opt instead to dig straight into the research. My tip to young lawyers, however, is to not forget that your client is likely your most valuable resource on a file. Your client knows the entire history of the vehicle, has likely witnessed firsthand any and all problems with the vehicle and also has a familiarity with the workers at the dealership.

4. Prepare for court

One of my biggest tips for winning these claims is preparation. Young attorneys sometimes think that, as the lawyer, you have to do all the work for the client in court. Preparing the client as a witness to help themselves is key. When the client knows what is going to happen in court and what to expect about the process, it puts his/her mind at ease. It also puts them in a better frame of mind to answer the questions coming from opposing counsel.

I believe that clients win their claims with the help of their attorney, as opposed to only winning because of their attorney. Judges and arbitration panels often want to hear from the clients themselves, not their attorneys. They are often jaded to attorneys and are in search of the truth. I believe when a prepared client speaks, he or she can hold more power than the attorney’s arguments in court.

The above-mentioned tips come from years of real-world experience navigating Lemon Law claims and should be helpful to any young attorney attempting to bring a claim.

Rachel Cichowic is a former prosecutor and current partner at Lemon Law Group Partners PLC, a law firm that focuses on fighting on behalf of consumers and protecting them from defective vehicles.
A mid heightened immigration enforcement actions, we are seeing an increase in inquiries from Human Resources (HR) directors and employees who are uncertain about what to do if immigration agents visit their place of employment. If the employer is prepared, it will already have compliance and inspection plans in place guided by in-house counsel or an outside immigration lawyer. If not, the employer should consult with an immigration lawyer to develop these plans. Most importantly, the employer must understand both its own and its employees’ rights. Employees also should consult with an immigration attorney regarding their immigration status.

Immigration laws affect all employers, whether the employer is a small mom-and-pop operation or a multinational corporation. If you have employees, you must have an immigration plan in place.

But what if all of my employees are U.S. citizens? Surely, I have no need to be concerned about immigration.

Wrong. All U.S. employers are required by federal law to ensure that their employees are authorized to work in the United States. The employer must have a Form I-9 on file for all current (and some former) employees hired on or after November 1986 to verify their identity and authorization to work in the United States. The Form I-9 Employment Verification can be found on the U.S. Citizenship and Immigration Services website at www.USCIS.gov. The law requires that employers, upon the hiring of every employee, review and record the individual’s original, valid identity documents and determine whether those documents reasonably appear to be genuine and related to the individual.

Well, that’s easy. We will just hire independent contractors to avoid this requirement.

Once again, you may be wrong. While it is true that an “independent contractor” is not considered an “employee” and does not need to complete a Form I-9, it is the duty of the employer to determine whether a worker should be classified as an “independent contractor” or “employee” based on the job functions that they perform. Both USCIS and the IRS have published official guidance on when an individual meets the definition of an “employee” versus an “independent contractor.”

“Independent contractors” include individuals or entities that carry on independent business, contract to do a project according to their own means and methods, and are subject to control only to the results of the work and not what and how it will be done. Many factors are considered when determining whether an individual or entity is an independent contractor, and it would be prudent to make this determination before engaging the individual.

Immigration law does not require the individual or entity that is contracting with the independent contractor to complete Form I-9 for the contractor, but it prohibits individuals or entities from contracting with an independent contractor if they know that the independent contractor is not authorized to work in the United States.

Ok, so now I am concerned. What should I do?

A recommended best practice is to conduct an internal I-9 audit immediately to ensure that every employee working for you is employment-authorized. Take remedial measures with the assistance of your immigration attorney because now is the time to do so. Corrections made after the government appears will not minimize potential fines or other penalties. In addition, if your business employs foreign nationals, you should already have an understanding of the relevant immigration process and your legal obligations as an employer. If you do not, you should consult an attorney for an explanation.

What should I do if a person enters my employer’s building claiming to be from immigration?

First, you should ask for identification and any paperwork they might have with them. Second, you should...
When Immigration Agents Visit Your Workplace

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confirm which government agency the person is from and review the paperwork that they brought with them. Your next course of action depends on which agency they are from and the purpose of their visit. These are the government agencies that may visit your place of employment:

- **ICE** – U.S. Immigration and Customs Enforcement, either
  - ICE HSI – Homeland Security Investigations or
  - ICE ERO – Enforcement and Removal Operations
- **FDNS** – the Fraud Detection and National Security Directorate, a division of U.S. Citizenship and Immigration Services USCIS
- **DOL** – the U.S. Department of Labor, most likely the Wage and Hour Division (WHD)
- **DOJ** – the U.S. Department of Justice, most likely the Office of Special Counsel

ICE HSI will show up for the I-9 audit or some sort of major investigation. With regard to the Notice of Inspection, ICE/HSI request to present I-9 Forms in three business days. ICE ERO will appear to pick up an immigration violator. If they have a warrant, you should only allow them access to the employee requested. FDNS will show up if you have filed Immigration Paperwork, for example, an H-1B Temporary Worker petition. FDNS will review compliance with a USCIS filing or investigate potential fraud in the sponsorship of the worker. DOL will show up to investigate wage issues, and the DOJ Office of Special Counsel will usually come to investigate employment discrimination issues.

After checking their paperwork, immediately call your immigration attorney. In many cases, time is of the essence to coordinate a response. Unless the warrant asks for specific documents, do not provide any documents to ICE without first seeking the advice of immigration counsel. Only provide the agents with requested documents and make copies of the documents taken or keep a record of inventory taken. Also, unless the agents have a warrant, you can refuse an immediate inspection. You have up to three days to respond and/or submit requested documents.

If the federal agents have a warrant, they should be granted total access to the facility but only to the extent described in the warrant and, if they do not have a warrant, you should allow entry only into the public areas. Anyone, including federal agents, is allowed to enter the public areas without permission. A public area includes the lobby, reception area and parking lot, if it is open to the public. If the agent is in your file room and asks for privacy, you are under no obligation to provide it. You should never leave them alone. You have a right to be there and observe what they are doing. Also, you should not allow employees to talk to officers before talking to your attorney. Involving an attorney is crucial to ensure compliance with U.S. Immigration Law.

Most importantly, be sure that your company has a plan in place to handle these situations. The federal government does not treat immigration violations kindly. Ensuring your company complies with the federal laws and prepared to handle any potential investigation is critical to avoiding future penalties.

Mark Harley, Esq. is a partner in Fox Rothschild’s Pittsburgh office and an experienced immigration attorney. He has represented individuals and businesses in western Pennsylvania in all areas of immigration law for more than a decade. Mark has broad knowledge and years of experience in obtaining non-immigrant and immigrant visas on behalf of clients, as well as counseling, training and developing compliance programs for employers.

Calling all writers!

The YLD At Issue editor is now accepting article submissions. The subject matter should be relevant to young lawyers. Articles should be no longer than 1,200 words. Longer articles may be considered to run as a series. All submissions should include a short author biography and a digital photo of the author (300 dpi resolution preferred).

Email articles to Mark Kovalcin at kovalcin.mark@gmail.com.

*Articles for the next issue are due March 15, 2019.*
Don’t Be Scared About Going Solo (Especially Out Of Law School)

By Matthew P. Crimmel, Esq.

If you’re like the vast majority of us, you assumed that law school would teach you everything you needed to know about our noble profession. You would start out as a 1L and, in less than three years, you would be able to answer any legal question and know your way around the courtroom. Upon graduation, you would know the law — or at least you thought you would — but then reality sets in. Why am I reading these cases? They seem like an interesting story, but what am I supposed to get out of them? Well, that’s the whole plan. Law school doesn’t necessarily teach you about the law. Rather, it teaches you how to learn about the law. And, most importantly, it shows you how you actually learn. That is why we “practice” law. It is a learn-as-you-go career. The lessons you learn in law school are similar to those you learn as you start a solo practice.

Starting a solo practice can cause trepidation for even the most arrogant “gunners” we remember from law school. But it doesn’t have to. Of course, we don’t want to mislead a client by pretending we know what we are talking about. That said, what are we supposed to say to our first prospective client when he/she asks us about our track record? Well, for ethical reasons, the truth. For some other questions, however, it is fine to respond, “Let me get back to you on this,” or “let me do some additional research on that.” Law school and the bar exam expected you to provide a coherent answer under limited time constraints. In practice, however, you have the time — time to learn about the issue, time to learn about the law and time to learn how the system works.

How do you learn about all of this? Start by asking fellow attorneys questions and reading what you can. Those who work at a firm might have the luxury of immediately being given the pertinent information or having someone they can go to for a question. But sometimes we learn better when we figure things out on our own, because learning under those circumstances tends to allow our brains to retain more information. When I first looked at the federal and state codes, they appeared long and convoluted. After I started to read them, they made more sense, and I realized that they are typically laid out in a logical order.

For example, Article Two of the Uniform Commercial Code first defines “goods,” then details what comprises an “agreement.” Thereafter, it explains when a breach occurs and, finally, it provides the measures of remedies. The order of these provisions appears to build logically on the one before, starting with the basic necessities for an agreement sale of goods, then flowing to a breach and subsequent remedy.

Another way to familiarize yourself in an area of law is to read complaints and motions filed in that area. These are usually available at the courthouse, and you can learn the entire case history. You will notice that they all are similarly formatted. Although they won’t all be identical, they will share common elements, such as (1) parties, (2) venue and (3) facts. This will give you a sense of not only what is needed, but why it is needed. Also, don’t forget about the court clerks; they can be valuable resources, sometimes even knowing more about specific procedures than the judge. Keep in mind that clerks often help pro se parties, who usually know about as much as a new attorney.

Finally, consider what is commercially available. Many CLE providers offer subscriptions that allow you to attend unlimited seminars and access previously-recorded lectures. In this context, there are more than just credit hours at stake. Don’t be like some attorneys that go to CLEs and spend the whole time reading the paper or doing Sudoku.

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Don’t Be Scared About Going Solo  
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You want to go there to actually learn something and meet others who can help you. Additionally, legal research companies not only have research attorneys on call to assist you in locating something, but they also have practice packages available that have attorney manuals and databases with forms and contracts that you can customize to suit your needs. You will still have to put some insight into what you are drafting, as these forms are not simply fill-in-the-blank. Regardless, they are still useful because they provide you something to work with, and you won’t have to reinvent the wheel.

After doing these types of things, the law will start to make more sense to you. You will look back at what you learned during law school and bar prep, and things will become clearer. Most of you will develop confidence in figuring something out. As lawyers, we tend to compare ourselves to the genius in the room. But, in reality, there are few geniuses. While there will always be someone who knows more or has grasped something sooner, it’s likely because the person already learned it or better understand how he/she learns.

Going solo right out of law school isn’t for everyone. It is not always practical or cost effective. And some professionals prefer the structure and security of a firm. There is nothing wrong with that. But for those that want to do their own thing, my experience has taught me that there is nothing as rewarding as being your own boss. Of course, being the boss can have its headaches, but you are the boss. Besides, who doesn’t enjoy seeing the small guy taking on a large firm? Whatever you decide, do not be intimidated. Start off slowly and work at a comfortable pace until you have accomplished what you have set out to do. Remember: many have done it before, and you can too!

Matthew P. Crimmel Esq. is a solo attorney who graduated from West Virginia College of Law in 2016. He is admitted to practice in Pennsylvania, New Jersey and West Virginia. He has several years of business experience stemming from opening a restaurant in 1995 that he continues to operate.

U.S. Legislators Take a Scattered Approach to Neonatal Abstinence Syndrome

By J. Alexander Short

Pennsylvania is the latest state to enact legislation in reaction to the growing impact the opioid epidemic has on infants. In June, Gov. Tom Wolf signed H.B. 1232, effectively requiring hospital officials to notify Child Protective Services when children are born affected by the mother’s substance abuse or affected by withdrawal symptoms as a result of prenatal drug exposure.

Such notifications are generally the product of neonatal abstinence syndrome (NAS), a group of health problems that occur in newborns exposed to drugs while in the mother’s womb. This legislation brings Pennsylvania into full compliance with the 2003 Federal Child Abuse Prevention and Treatment Act. And, this is legislative response that makes sense.

According to a report by the Pennsylvania Health Care Cost Containment Council (PHC4), Pennsylvania has experienced a 1096 percent increase in the rate of NAS since 2000. Such enormous growth results in both higher costs for the state and greater health complications for mother and child. Unfortunately, the findings of PHC4 aren’t unique. In reality, these findings are on par with the rest of the country. Despite this commonality, there is no agreement about how to handle it.

In response to the growing NAS problem, legislators and policymakers have failed to find consensus, creating a scattered legal landscape that lacks uniformity from state to state. By reviewing and understanding various policies underlying different legislative approaches to NAS, one can better understand how to appropriately navigate this issue moving forward.

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Tennessee employs a unique — and arguably extreme — legislative approach to NAS. In 2014, Tennessee passed a statute that criminalizes the consumption of narcotics by pregnant women, making it the first and only state to specifically criminalize this behavior. Further, Tennessee utilizes a punitive approach to the issue. Although this statute punishes pregnant women with a substance use disorder, the state allows pregnant women to use evidence of participation in treatment programs as an affirmative defense against such prosecutions.

In states without laws criminalizing NAS, some prosecutors have relied on creative interpretations of pre-existing laws. Although a number of approaches exist, the most prevalent include prosecuting under theories of child abuse, theories of possession of a controlled substance, and theories of postpartum drug delivery through the umbilical cord after the child is born but before the umbilical cord is severed. In doing so, states utilizing these approaches also promote punishment as an appropriate solution to the issue of NAS.

Other states approach NAS from yet another perspective. For example, Minnesota, South Dakota and Wisconsin have involuntary civil commitment laws, which aim to have expecting women rehabilitate their drug problem prior to giving birth. Among the states that utilize such laws, there is a distinct lack of uniformity in the operation of those laws, including differences in the amount of time required for civil commitment. Additionally, it is unclear how often these laws are enforced.

A majority of states, however, utilize voluntary treatment programs to assist pregnant women in their recovery. These states may, nonetheless, classify NAS as child abuse or require mandatory reporting. According to the Guttmacher Institute, 22 states and the District of Columbia require healthcare professionals to report suspected instances of substance use disorder among pregnant women to the appropriate government agency. Further, seven states require expecting mothers to undergo mandatory drug testing in similar situations. These states tend to approach NAS as a healthcare issue as opposed to a criminal issue.

The recently-enacted Pennsylvania legislation mandates healthcare professionals report any instances of NAS to a child protection agency. This notification, however, will not be considered a child abuse report and will not trigger automatic involvement by child welfare services. This legislative response reflects the care with which legislators are handling this subject, as well as the legislations’ recognition of the stigma commonly felt by individuals with substance use disorder.

However, the new Pennsylvania law highlights larger health policy concerns. Indeed, the issue of NAS underscores an intersection of public health and criminal justice considerations and, as such, policymakers and legislators must examine this issue with both in mind. Ultimately, policymakers and legislators must address the crux of the issue — whether treatment or punishment is preferable for expecting mothers with substance use disorder.

A better understanding of the health policy considerations underlying NAS will allow policymakers and legislators to develop a less scattered and more unified approach to this public health issue moving forward.

Alex Short is a second-year law student at the Penn State Dickinson Law. A founding member of the newly formed Dickinson Addiction Legal Resource Team, Alex works with other Dickinson law students and professors to develop and disseminate legal resources and promote informed policymaking in the context of the opioid crisis. A contributor to the Harvard Law School Bill of Health blog, Alex hopes his background as a law student and his interest in healthcare issues will allow him to contribute unique perspectives on modern healthcare issues. Alex hopes to become a prosecutor after law school and admission to the bar.
What happens when you can’t work? If you have an accident or get sick and must stop working, life continues to move. There are still bills to pay and a family to provide for; what do you do when your income stops? At this point, hopefully you have disability insurance. More importantly, this disability insurance needs to cover your injury or sickness and provide you with enough in disability benefits to cover your ongoing expenses.

Most people think they will never need disability insurance. What many do not realize, however, is that the chance of being disabled for at least 90 days prior to age 65 is three times greater than the chances of dying prior to age 65. One in five Americans live with a disability, and one in ten live with severe disabilities. Additionally, more than one in four 20 year olds will become disabled before reaching retirement age. For lawyers, 21 to 36 percent qualify as problem drinkers. Beyond that, 28 percent suffer from depression, 19 percent suffer from anxiety, and 23 percent suffer from stress. Even more concerning, in the first 10 years of private practice, young lawyers experience the highest rate of problem drinking and depression. In light of this, here are four important points to remember before the need for disability insurance arises:

Have a disability insurance policy

The first step in understanding your disability insurance is understanding the coverage you have and knowing whether you need more. The two most common forms of private disability insurance are generally group long-term disability (LTD) plans provided by an employer and individual disability insurance policies purchased directly from a broker. As explained below, while each of these types of disability insurance generally cover your inability to work for an extended period of time due to a medical condition, they each function differently. The important thing to remember is that your employer decides what provisions are in the group LTD plan and you pick the coverage you want when buying an individual policy.

Understand your disability insurance policy

The definition of disability changes from policy to policy. Disability can range from the inability to perform the material and substantial duties of your “own occupation” to the inability to perform “any occupation.” Group LTD plans often have a disability definition that starts as “own occupation” during the first two years of a disability and then changes to “any occupation” thereafter. Whereas, with an individual policy, you generally will have the option to buy a policy with “own occupation” coverage to last the life of the policy.

There is also a period of time you must wait between when you become disabled and when benefits become payable. This period is known as an “elimination period,” and the most common waiting periods are 90 or 180 days. For group LTD plans, this generally lines up with any short-term disability plan that is provided in conjunction with the LTD plan.

Once you know how disability is defined and when benefits will become payable, how much will you receive? The benefit amount of a group LTD plan is typically a fixed percentage of your base salary capped at a specific amount. In addition, the benefit will probably be reduced if you receive other income such as Social Security Disability Insurance, severance or pension payments. Individual disability plans

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Understand Your Disability Insurance

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give you the option of how much coverage you want to purchase and often have the ability to increase that coverage as your salary increases and increase the benefit amount while disabled with a cost of living adjustment.

How long you will receive benefits is also defined in your policy. Some group LTD plans will provide benefits until age 65, and some will only provide benefits for a set number of years. Individual policies will generally provide benefits until 65, or possibly for life. Almost all group LTD plans, however, will limit benefits to 24 months for mental health conditions, drug and alcohol use, and self-reported injuries, while individual disability policies often do not have such limitations.

Understand your disability

Understand what your disabling medical condition is and how it impacts your ability to work. Make sure you receive treatment from the right kind of doctor for your injury or sickness and that you follow your doctor’s treatment plan. All disability policies require that you receive appropriate medical care from an appropriate doctor.

Also make sure your doctor will help you in the disability process. They will be asked to complete forms and provide opinions on how your condition is preventing you from working. Make sure they are willing to be an active participant in the process.

What happens if your claim is denied

Unfortunately, even when you know how your policy works, have suffered a disabling condition and have properly documented how it has forced you to stop working, insurance companies may still deny your claim for disability benefits. You, however, have options when your claim is denied. For group LTD plans, you have a fixed period of time to file an internal appeal. Should the insurance company deny your appeal, you have the option to file suit for benefits in federal court. Here, judges generally review the insurance companies claim decision under an arbitrary and capricious standard. Individual disability policies will define what your options are should your claim be denied. However, they often will follow a similar pattern of an internal appeal before the option of filing suit.

It is important to understand how disability insurance works, that you have the coverage you need and, should you ever suffer a disabling condition, you receive the benefits you are entitled to. Make sure you consult with the appropriate experts, such as a private insurance broker, in determining if you have the appropriate coverage for your overall financial plan and an experienced attorney for filing a claim or facing a denial of your claim.

Benjamin Krone is an attorney at Seltzer & Associates in Philadelphia. He represents sick and injured professionals and executives in all aspects of their individual and long-term disability insurance claims, denials and terminations. If you have questions, need help with your disability claim or want to learn more, visit www.SeltzerLegal.com or call 888-699-4222.
Help with Addiction: Taking the First Step

By Laura B. Garber, Esq.

We have all heard the warnings. We have heard them hundreds — if not thousands — of times. At this point, you would essentially have to be living under a rock to remain unaware that alcoholism and other addictions affect the legal profession at a greater rate than the rest of the population. The issue with that statistic, however, is that it presents the problem on a macro scale. What about when the problem is affecting you on a micro level? What about when the problem is you? What do you do?

The first thing I need you to know, once you realize and accept that you have a problem, is that you will never truly be ready to change. There is no magical moment where you suddenly want to divert from your problematic habits. To be sure, there will be fleeting moments where you feel like you want to change. You'll think about reaching out for the help that is offered and how your life will be better afterwards, but each time you'll think about the things you'll have to give up—e.g., your substance of choice, the control you think you have, your whole life. Chances are, you won't really, actually want to get help. That's precisely the nature of addiction.

If you've reached the point of realizing you have a problem, I'm here to encourage you to reach out for that help, whether you feel like you want it or not. This is based on an important thing I learned in therapy—motivation follows action. If you contact Lawyers Concerned for Lawyers (www.lclpa.org, 1888-999-1941), an inpatient rehab facility, an intensive outpatient program such as Rehab After Work (rehabafterwork.com, 1-800-238-4357) or a therapist, you may begin to doubt yourself. Again, your brain reminds you that you'd be giving up your substance of choice forever, and you may start to rethink your decision to seek help. Resist that impulse. Make the call. Go to the appointment. Keep going. If you engage long enough, you will find the motivation to continue—often from the very things you dreaded in the past—and your actions will be spurred on accordingly. I learned during my stay in an inpatient rehab that literally remaining in the rehab facility for a certain length of time would significantly increase the odds of preventing relapse in the future. The point is that if you need help, you're going to need to trust the process.

I am a lawyer, so, if you ask me what the process is like, I am obligated to say, “it depends.” It does depend on many things, but what it depends on the most is a person’s ability to be honest. An addiction lies to you about your need to keep it in your life. An addict lies to himself or herself about the necessity of the substance of choice, about the ability to stop at any time, about the ability to moderate the use of a substance. Someone struggling with a substance abuse problem cannot successfully confront the issue and become free of the substance without becoming honest about a seemingly infinite number of things. Fortunately, skilled professionals can help a struggling individual on the journey to complete honesty. However, it begins with an honest assessment that one has a problem. It's cliché, but an individual with a substance abuse problem must admit to himself or herself that a problem exists before the problem can begin to be solved.

I challenge you to be honest about an alcohol or substance abuse problem you may be having. It is the first step and best if it is followed by reaching out for help. I believe you can do it.

Laura Garber graduated from the University of Michigan Law School and previously clerked for the Honorable William J. Martin, President Judge of Indiana County and the Honorable Anne E. Lazarus of the Superior Court of Pennsylvania. She currently clerks in the chambers of Judge Carolyn H. Nichols of the Superior Court of Pennsylvania. Laura is a recovering alcoholic who spent five weeks in an inpatient rehab and has been sober for over two years.

Laura B. Garber
Lawyers as Targets: How Attorneys Get Ensnared in FCPA Misconduct, Part I

By Lou Ramos, Esq. and Benjamin Klein, Esq.

Editor’s Note: This article was originally published on Law360.com and has been reprinted with permission. Further, this article will run as two parts; the first part will highlight notable prosecutions of in-house counsel, with the second part providing solutions to avoid these pitfalls.

There are some statements that corporate leaders never expect to hear from their employees, particularly from those entrusted with managing their company’s legal and compliance risks.

“I should have refused to draft the contract that we used for paying bribes.”
— Former Keppel Offshore & Marine Ltd. In-House Counsel Jeffery Chow

“I was making these bribe payments,” “I knew better than to get involved in such illegal conduct,” and “I lost my moral compass.”
— Former PetroTiger Ltd. General Counsel Gregory Weisman

These are two examples pulled from hearing transcripts of two recent Foreign Corrupt Practices Act (FCPA) enforcement actions. The prosecutions of veteran lawyers at two multinational corporations — Keppel Offshore & Marine Ltd. and PetroTiger Ltd. — offer a sobering truth: those responsible for protecting their companies from corruption-related risks can be held criminally accountable for their lapses in judgment. In both cases, federal authorities targeted in-house counsel for their participation in bribery schemes, securing guilty pleas and cooperation agreements.

Unsealed court documents shed light on the moments when these attorneys lost their moral compasses. In Part I of this article, we examine the conduct that led to their prosecutions and identify potential pitfalls for both legal and compliance professionals, especially those responsible for managing bribery risks. In Part II, we will discuss the steps that you can take to ensure you don’t find yourself in a similar situation.

Keppel enforcement action and the fall of a veteran in-house counsel

On Dec. 22, 2017, Singapore-based Keppel Offshore & Marine Ltd. (Keppel Singapore) and its wholly-owned US subsidiary, Keppel Offshore & Marine USA Inc. (Keppel USA), agreed to pay more than $422 million to American, Brazilian and Singaporean authorities to resolve charges stemming from a decade-long scheme to pay millions of dollars in bribes to government officials in Brazil. The resolution was the second-largest anti-corruption enforcement penalty in 2017 and the DOJ’s first coordinated anti-brib-
ery action with its Singaporean counterpart. Keppel USA pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA while Keppel Singapore entered into a deferred prosecution agreement with a similar charge. The DOJ accused Keppel Singapore of conspiring to violate the FCPA by “paying approximately $55 million in bribes [between 2001 and 2014] to officials at the Brazilian state-owned oil company Petrobras and to the then-governing political party in Brazil” through a consultant “in order to win 13 contracts with Petrobras and another Brazilian entity.”

The same day, a federal judge issued an unsealing order revealing the identity of a “John Doe” cooperator in the Keppel enforcement action: former senior in-house counsel Jeffery Chow. According to court records, Chow spent over 25 years working for Keppel, including stints as “Administrative Manager, General Manager and Director,” and was responsible for drafting and preparing contracts for the company’s agents, including at least one contract that was used to pay bribes to government officials. In its Information, which was filed under seal on Aug. 29, 2017, the DOJ alleged that Chow, among others, “created and executed false agreements on behalf of [Keppel] with consulting companies controlled in whole or in part by [Keppel’s agent]” which “falsely represented that payments were being made to [Keppel’s agent] for his assistance and support in discussions and negotiations with prospective customers when, in fact, portions of these payments were being paid as bribes.” The DOJ further alleged that some of the contracts “falsely represented that [the agent] was abiding by anti-bribery laws and was not making improper payments” and accused Chow of “knowing that a portion of those payments would be used to pay bribes to officials at Petrobras and to the Political Party.” Chow allegedly engaged in the following overt acts in furtherance of a conspiracy to violate the FCPA: executing questionable consulting agreements, coordinating the execution of such agreements, and corresponding with an executive about the structure of commission payments to an agent accused of bribing foreign officials. During his August 2017 plea hearing, Chow acknowledged ignoring glaring red flags, including “millions of dollars” in overpayments to an agent in Brazil, and to being aware that company funds were being funneled to foreign officials. As stated by Chow:

By no later than 2008, I realized that Keppel was overpaying the agent, sometimes by millions of dollars, so that the agent could pay bribes to individuals who could help Keppel Offshore Marine doing business with Petrobras ... Although no one ever named the bribe recipients for me, I knew that they were government officials and [the] ruling political party. I should have refused to draft the contract that we used for paying bribes, and I should have resigned from Keppel. Instead, I discussed the economic terms of the contracts with my seniors at Keppel and acting in agreement with my seniors, and others at Keppel, I drafted the contracts and made sure that they were executed.

Both the court documents and Chow’s own admissions made during the plea hearing suggest that he was aware of the bribery scheme and helped facilitate it by drafting, preparing and executing questionable contracts. While he denied negotiating the contracts or making the decision to pay the bribes, he acknowledged that the contracts — including one that was executed in Houston, Texas — “were an important part of the bribery scheme” because they helped provide a semblance of legality.

**PetroTiger investigation and the fall of its general counsel**

The PetroTiger Ltd. investigation targeted three former executives of the British Virgin Islands oil and gas com-

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company: former co-CEO Joseph Sigelman, former co-CEO Knut Hammarskjold, and former General Counsel Gregory Weisman. While the DOJ ultimately declined to prosecute PetroTiger, citing its voluntary disclosure, full cooperation and remedial efforts, the three executives experienced a different fate. The former co-CEOs and general counsel were accused of paying $333,500 in bribes to an employee of Colombian national oil company Ecopetrol SA in order to help secure a multimillion-dollar oil services contract, and all three executives — including Weisman — ultimately pled guilty to conspiring to violate the FCPA.

The DOJ accused Weisman and others of paying bribes to a foreign official in order to influence Ecopetrol’s contract approval process. According to the DOJ, Weisman initially attempted to conceal the bribe payments by funneling them through the foreign official’s wife and claimed in company documents that the payments were for consulting services that she ultimately did not perform. Those payments were ultimately wired directly to the foreign official’s bank account and allegedly helped obtain Ecopetrol’s approval and secure an oil services contract valued at approximately $39.6 million. The DOJ accused Weisman of engaging in several overt acts in furtherance of a conspiracy to violate the FCPA, including wire transfers to the foreign official and communications about the bribe payments.

While Weisman and Hammarskjold pleaded guilty early in the investigation, Sigelman waited until mid-trial to enter a guilty plea. Prosecutors called Weisman at trial to testify about the PetroTiger bribery scheme, including “disguised” invoices for consulting payments that listed the name of the foreign official’s wife. Although Weisman stated that he initially declined Sigelman’s request that he wire funds in July 2010 because he did not want to have his “fingerprints all over ... this large bribe payment,” he ultimately submitted to Sigelman’s pressure and made the payment:

I think it was around October of 2010, I received a phone call from Joseph Sigelman, him telling me that I needed to go and make payment to [the foreign official’s wife]. I told him I was not going to do so, just like I had said before, and he went into, I had no choice, I had to make the payment. The company was – I can’t think of – completely screwed, are the only words I can think of, if I didn’t make the payment. Again, no choice, you have to make the payment, and eventually I relented and said I would make the payment.

Weisman testified that he “had a clear understanding [as early as May 2010] that PetroTiger was paying bribes to win business” and that the payments he ultimately wired were “bribe payment[s] for the benefit of the [foreign official] for PetroTiger to win business that was being doled out by Ecopetrol.” Weisman also testified to making additional payments — totaling approximately $270,000 — to the foreign official.

Other criminal prosecutions involving in-house counsel

The Weisman and Chow prosecutions might seem like isolated incidents, but there are several other criminal cases in recent years in which the DOJ has targeted in-house counsel. In one case, a former software company general counsel pled guilty to securities fraud conspiracy and obstruction of justice charges for his role in an accounting fraud scheme and was sentenced to two years in prison. In another case, the DOJ charged an attorney at a major construction company with aiding in filing a false tax return on behalf of his employer. While prosecutors claimed that the in-house attorney knowingly sought improper research and development tax credits for his employer, a jury acquitted him of the charges. More recently, prosecutors charged an in-house lawyer at a major pharmaceutical company with obstruction of justice and making a false statement in connection with submissions to the Food and Drug Administration. The in-house attorney was ultimately acquitted at trial. As illustrated by these cases, the pressures placed on in-house counsel to help their clients succeed can be enormous, with similarly enormous penalties for those who are caught.

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PBA Bar Leadership Institute Holds Program on Implicit Bias

Foreword by At Issue Editor Anthony D. Cox Jr., Esq.

Imagine driving home from an oral argument or a deposition and being stopped by local police right before you pull into your driveway. It is your instinct to question why you are being pulled over. Is it because you were speeding? Or, perhaps, a malfunctioning brake light? However, in this case, it is neither of those. Instead, you are being pulled over simply because you look differently than most of your peers. In fact, the officer pulled you over because it was his/her belief you did not live in the neighborhood. The officer’s decision is nothing explicit, or even conscious. The officer’s decision was simply because you do not fit the description of the stereotypical resident in your neighborhood. The officer’s decision is an illustration of implicit bias.

In another scenario, imagine walking into a grocery store wearing religious headwear. Subsequently, you notice your peers looking at you in a suspicious manner. It is your instinct to question whether you are getting these looks because you did something wrong. Again, your peers are looking at you differently because they subconsciously identify you as someone that they believe may harm them. The actions of your peers are another illustration of implicit bias.

What is implicit bias? The Kirwan Institute defines implicit biases as “the attitudes or stereotypes that affect our understanding, actions and decisions in an unconscious manner.”

Since implicit biases are not made in a conscious manner, it is a difficult issue to address. For example, in the two scenarios presented above, it is likely that the officer and your peers were unaware of their subconscious thought process. How can we mitigate implicit biases? To address the issue of implicit bias, it is critical for all of us to educate ourselves and increase our awareness with respect to this issue. Further, we must make it our goal to educate and increase the awareness of our peers.

The PBA’s Bar Leadership Institute (BLI) Class of 2017-2018 presented a Continuing Legal Education panel

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In Part One of this article, we discussed the rise of diversity in the country and legal community and the problems presented by failing to properly serve them. In Part II of this article, we present possible solutions to those issues. All of these solutions will take time to execute, as there is no available quick fix. We must start somewhere, however. Below are three suggestions that we believe can aid in serving the ever-growing Hispanic community.

1. Help prepare scholarships for Hispanic students to attend law school.
   In today's world, we can all agree that law school is incredibly expensive. According to the United States Census Bureau, Hispanics’ average yearly income is $47,675. In contrast, the average law school graduate accumulates $130,224 in debt if they went to private school or $92,997 if they went to public school. Unfortunately, because of this disparity, the average Hispanic student cannot afford to accumulate that level of debt. If the legal community came together and donated even a small amount of money, there is no reason why we cannot help a Hispanic student afford law school. You can help Hispanic students afford law school by donating money to the Hispanic Bar Association of Pennsylvania. This organization has done a phenomenal job in assisting Hispanics to prosper in the legal field. If you prefer to donate to a national organization, you can donate money to the Hispanic National Bar Association.

2. Take on Hispanic students, whether they are law students or undergraduate students for internship/externship opportunities.
   You may wonder how it is possible to hire Hispanic students if they don’t apply first. The answer to this question is not simple. Some ways we can improve on this is by reaching out to undergraduate schools and law schools and request students apply to any available positions. Further, we can start targeting an even younger demographic — high school students. If we can pique a student’s interest at a young age, it should positively affect enrollment into undergraduate programs and more importantly law school. This would allow for students to become more involved in the legal community at a younger age, as opposed to their first exposure coming during law school.
   Additionally, do your best to mentor these students. Teach them what it is like to be an attorney. Show them how to network. Help them improve their skills and make them a more effective advocate. Doing this will build a rapport between yourself and the student. Of course, being a mentor does not mean that you have to do all the teaching. Rather, it means that you are facilitating a relationship of trust and loyalty with the student. With this newfound trust and loyalty, you will be able to better understand the student, thereby leading to a greater understanding of the Hispanic culture.

3. If you have Hispanic attorneys, advertise it.
   To this point, merely advertising that your firm “speaks” Spanish is insufficient. For some firms, that means that they have someone in the office who is merely conversational in the language. For others, it means that they contract with a third-party translation service, and possibly none of their attorneys actually speaks the language. Both of these options fall short of the personal touch and communication necessary within our profession. If you have a fluent Spanish-speaking attorney, advertise it. This gives them an opportunity to connect with the community. From a client’s perspective, discussing your personal legal matters through a translator is not only worrisome but also impersonal. If,
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discussion on the topic during the Young Lawyers Division Summer Summit in July 2018 as their BLI Class Project. The panel discussed how implicit biases affect not only the legal profession, but also our day-to-day lives. In addition to teaching us how to spot and mitigate implicit bias, the panel discussed the interplay between implicit bias and the Rules of Professional Conduct. This discussion can be used as a starting point for us all with respect to addressing implicit bias and preventing scenarios — such as those mentioned above — from occurring. To watch the full presentation, the links to Parts 1 & 2 of the panel discussion can be found here:

https://www.youtube.com/watch?v=jNtwDldj3nk&feature=youtu.be
https://www.youtube.com/watch?v=bJB1guoWuw&feature=youtu.be

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however, the Hispanic community knows that your firm has an individual who can handle their issues and discuss them in their preferred language, this will create a sense of connection with the attorney and help your business grow.

The legal community includes some of the smartest people in the world. There is no reason that we cannot put our collective minds together and come up with a solution to penetrate the Hispanic market, attract more Hispanic lawyers, learn more about that community and effectively provide representation at the same time.

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