

year limit on removal can be waived by a plaintiff if a timely motion to remand is not made. *Guddeck ex rel. Guddeck v. SmithKline Beecham Corp.*, \_\_\_ F. Supp. 2d \_\_\_ (D. Minn. 2014).



■ **Motion to Remand Denied; Fraudulent Joinder; "Total Activity" Test Rejected.** Judge Montgomery denied the plaintiffs' motion to remand an action that had been removed on the basis of alleged fraudulent joinder, finding that the individual defendants had been fraudulently joined, and also rejecting that plaintiffs' attempt to have the corporate defendant's citizenship determined under the "total activity" test that was rejected by the Supreme Court in 2010. *Farr v. Burlington Northern Santa Fe Railways*, 2014 WL 3579673 (D. Minn. 07/21/2014).



■ **Requests for Class Certification; Fed. R. Civ. P. 23(b)(3).** Judges Doty and Schiltz both relied on a lack of commonality in denying motions for class certification. Judge Doty's case involved unlawful commercial faxes sent in violation of the TCPA, and Judge Doty also relied on the difficulty in ascertaining class membership. Judge Schiltz's case involved force-placed insurance for borrowers, and was likely to require the application of the laws of all 50 states. *Sandusky Wellness Center LLC v. Medtox Scientific, Inc.*, 2014 WL 3846037 (D. Minn. 08/05/2014). *Rapp v. Green Tree Servicing, LLC*, \_\_\_ F.R.D. \_\_\_ (D. Minn. 08/05/2014).

—JOSH JACOBSON  
Law Office of Josh Jacobson

**IMMIGRATION LAW**

**ADMINISTRATIVE ACTION**

■ **Department of Homeland Security: New System of Records.** The Department of Homeland Security (DHS) recently posted notice regarding the creation of a new records system allowing it to collect, maintain, and retrieve records about individuals, including members of the public, who electronically authenticate their identities through E-Verify Self Check and myE-Verify. 79 *Fed. Reg.* 46857-62 (8/11/2014).

<http://www.gpo.gov/fdsys/pkg/FR-2014-08-11/pdf/2014-18703.pdf>



■ **Adjudication of H-1B Petitions: Nursing Occupations.** On July 11, 2014, U.S. Citizenship and Immigration

Services (USCIS) issued a policy memorandum providing guidance on the adjudication of H-1B petitions for nursing positions. The policy memorandum specifically assists USCIS officers in determining whether or not a nursing position meets the definition of a "specialty occupation." USCIS Memorandum (PM-602-0104), "Adjudication of H-1B Petitions for Nursing Occupations" (07/11/2014). [http://www.uscis.gov/sites/default/files/files/nativedocuments/2014-0711\\_EIR\\_Nursing\\_PM\\_Effective.pdf](http://www.uscis.gov/sites/default/files/files/nativedocuments/2014-0711_EIR_Nursing_PM_Effective.pdf)



■ **Employment: Citizenship Status Discrimination; Airline Pilots.** On August 7, 2014, the Office of Special Counsel for Immigration-Related Unfair Employment Practices, U.S. Department of Justice Civil Rights Division, announced a settlement with Travel Management Company (a private airline charter company), after finding that it had a U.S. citizenship requirement for its commercial pilot positions, notwithstanding the fact that no law, regulation, executive order, or government contract authorized the company to restrict employment in such a manner. The company agreed to pay \$22,000 in civil penalties, revise its hiring and recruiting procedures, train its human resources staff to ensure compliance with the Immigration and Nationality Act, and submit to reporting requirements for a two-year period. "Employers must give all eligible candidates an equal opportunity to compete for employment and cannot create unlawful discriminatory barriers to work," said Acting Assistant Attorney General Molly Moran for the Civil Rights Division. "The department is committed to ensuring that employers do not unlawfully discriminate against U.S. citizens and other work-authorized individuals based on their citizenship status." <http://www.justice.gov/crt/about/osc/pdf/publications/Settlements/TravelManagement.pdf>



■ **Special Immigrant Visas for Afghan Nationals.** On August 11, 2014, the Department of State (DOS) announced that its authority to issue special immigrant visas to Afghan nationals under Section 602(b) of the Afghan Allies Protection Act of 2009, as amended, has been extended through December 31, 2014. Up to 1,000 special immigrant visas, in addition to the 3,000 visas for Afghan principal applicants originally allocated for use in FY2014, may be issued through the end of the year. The

**James C. Erickson, Sr.**



**25 YEARS OF EXPERTISE**

**Fire & Property Damage  
Policy Appraisals  
Personal Injury/Death  
Mediations/Arbitrations  
Minnesota/Wisconsin**



Erickson, Bell, Beckman & Quinn  
1700 W Highway 36, Ste 110  
Roseville, MN 55113  
Phone: 651-223-4999  
Email: [jerickson@ebbqlaw.com](mailto:jerickson@ebbqlaw.com)

**TRADEMARK  
Copyright & Patent Searches**

*"Experienced Washington office  
for attorneys worldwide"*

**FEDERAL SERVICES & RESEARCH:**

Attorney directed projects at all Federal agencies in Washington, DC, including: USDA, TTB, EPA, Customs, FDA, INS, FCC, ICC, SEC, USPTO, and many others. Face-to-face meetings with Gov't officials, Freedom of Information Act requests, copyright deposits, document legalization @ State Dept. & Embassies, complete trademark, copyright, patent and TTAB files.

**COMPREHENSIVE: U.S. Federal, State, Common Law and Design searches, INTERNATIONAL SEARCHING**

**EXPERTS:** Our professionals average over 25 years experience each  
**FAST:** Normal 2-day turnaround with 24-hour and 4-hour service available

**GOVERNMENT LIAISON SERVICES, INC.**  
200 N. Glebe Rd., Suite 321  
Arlington, VA 22203

**Ph: 703-524-8200, Fax: 703-525-8451**  
Minutes from USPTO & Washington, DC

**TOLL FREE: 1-800-642-6564**  
[www.GovernmentLiaison.com](http://www.GovernmentLiaison.com)  
[info@GovernmentLiaison.com](mailto:info@GovernmentLiaison.com)

program will end on December 31, 2014 unless Congress extends it. <http://travel.state.gov/content/visas/english/news.html>



■ **Key Foreign Terrorist Organizations List.**

The Department of State's 2009 determination of Asbat al-Ansar (and other aliases) as a foreign terrorist organization will be maintained pursuant to Section 219 of the Immigration and Nationality Act. 79 Fed. Reg. 47513 (08/13/2014). <http://www.gpo.gov/fdsys/pkg/FR-2014-08-13/pdf/2014-19154.pdf>

The Department of State's 2008 determination of Harakat ul-Mujahidin (and other aliases) as a foreign terrorist organization will be maintained pursuant to Section 219 of the Immigration and Nationality Act. Ansar ul-Ummah will be added as a new alias for the organization. 79 Fed. Reg. 46499-00 (08/08/2014). <http://www.gpo.gov/fdsys/pkg/FR-2014-08-08/pdf/2014-18802.pdf>

The Department of State's 2009 designation of Shining Path (and other aliases) as a foreign terrorist organization will be maintained pursuant to Section 219 of the Immigration and Nationality Act. 79 Fed. Reg. 46297 (08/07/2014). <http://www.gpo.gov/fdsys/pkg/FR-2014-08-07/pdf/2014-18720.pdf>

JUDICIAL LAW

■ **Evidence: Removal Proceedings; I-9 Form.**

The 8th Circuit upheld the immigration judge's denial of the petitioner's application for permanent residence. It found no violation of her statutory rights when the immigration judge denied her motion to suppress her I-9 forms and educational records containing a false claim to U.S. citizenship. "Removal proceedings and the provision prohibiting falsely claiming United States citizenship are both contained in the INA. See INA §237(a)(3)(D) (false claims of citizenship), 240 (removal proceedings). Accordingly, INA §274A(b)(5) allows the admission of I-9 forms into evidence in removal proceedings." *Downs v. Holder*, No. 13-1643, slip op. (8th Cir., 07/14/2014). <http://media.ca8.uscourts.gov/opndir/14/07/131643P.pdf>

—R. MARK FREY  
Frey Law Office

INTELLECTUAL PROPERTY

JUDICIAL LAW

■ **Patent Claim Construction: Means-Plus-Function Claims.** Judge Montgomery recently construed disputed claim terms in a patent infringement suit in-

cluding an interesting means-plus-function limitation. Dane Technologies sued Gatekeeper Systems for patent infringement on patents that cover shopping cart retrievers—the motorized devices that move nested shopping carts around parking lots. Among the disputed claim terms was a means-plus-function limitation. A means-plus-function limitation is part of a patent claim that is written as a means for performing a particular function without naming the structure that carries out that function. Means-plus-function limitations require the court to construe both the function recited and determine what structures disclosed in the patent correspond to the means for performing that function. The claim at issue recites "a burst means for overriding the second power-limiting means." The parties agreed that the function of the "burst means" is to override the second power-limiting means, which limits maximum power output to the electric motor of the cart retriever. The parties disagreed, however, on what structure, if any, was disclosed in the patent to carry out the function claimed. Dane argued that the corresponding structure is "a controller implementing a burst mode, and equivalent structures." Gatekeeper countered that the structure is "a controller implementing a burst mode that allows the controller's maximum power output to exceed the selectable limit for a limited time before again becoming subject to the selectable limit." The court rejected Dane's construction because it merely repeated the claim language and did not point out a corresponding structure in the patent. The court found Gatekeeper's construction, on the other hand, identified an appropriate structure disclosed in the patent that corresponded to the means for performing the identified function. Consequently, the court adopted Gatekeeper's construction of "a burst means." *Dane Techs., Inc. v. Gatekeeper Sys., Inc.*, 2014 U.S. Dist. LEXIS 95233 (D. Minn. 07/14/2014).



■ **Copyright Infringement: Statute of Limitations; Rule 11 Sanctions.**

Judge Schiltz recently dismissed plaintiff's claim of copyright infringement as "obviously time barred," but denied defendants' motion for sanctions due to a procedural error. Scott Breuer Construction sued Dennis and Linda Koch and Tri County Lumber for copyright infringement related to architectural plans for a house. The court concluded SBC's claim was barred by the statute of limitations and granted defendants'

motions for judgment on the pleadings. The Copyright Act requires copyright claims be "commenced within three years after the claim accrued." Here the court found that SBC inexcusably waited four years after it discovered the alleged infringement before filing suit. The defendants subsequently moved for sanctions under Fed. R. Civ. P. 11 against SBC's counsel for filing an "obviously time barred" copyright claim and for continuing to pursue the claim after defendants repeatedly informed SBC that it was time barred. The court agreed that SBC's attorneys violated Rule 11 because no reasonable attorney could have concluded that, at the time the copyright claim was filed against defendants, the claim was "warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law ... ." The defendants, however, did not serve their motion for sanctions on SBC's counsel at least 21 days before filing that motion with the court, as required by Fed. R. Civ. P. 11(c)(2). Because the defendants did not satisfy the procedural requirements of Rule 11, the court denied their motion for sanctions. *Scott Breuer Construction, Inc., v. Koch*, 2014 U.S. Dist. LEXIS 87000 (D. Minn. 06/26/2014).

—TONY ZEULI  
—BARBARA MARCHEVSKY  
Merchant & Gould

JUVENILE LAW

JUDICIAL LAW

■ **Juvenile Delinquency: Certification as Adult; Findings Required.**

The Minnesota Supreme Court has again reaffirmed the discretion provided to juvenile court judges when determining whether to certify a juvenile as an adult for prosecution. The issue in the present case was exactly what express findings the juvenile court is required to make pursuant to Minn. Stat. §260B.125, subd. 3-4 (2012) when determining whether a child has overcome by clear and convincing evidence the presumption in favor of certification to adult court for certain severe offenses. The juvenile who was the subject of this appeal was charged by juvenile court petition as both a principal and an accomplice to criminal sexual conduct, conspiracy to commit first-degree criminal sexual conduct, kidnapping, and committing a crime for the benefit of a gang, all involving a 14-year-old female victim.

Following a three-day hearing, the juvenile court concluded that the juvenile had not overcome the presumption