



MEETING RECAP FOR
THE PAULINE NEWMAN
IP AMERICAN INN OF COURT
WEDNESDAY, MARCH 19, 2014

The third Inn meeting of the 2014 calendar year again took place in the Offices of Birch Stewart, Kolasch & Birch, LLP in Falls Church, Virginia. There was a reception beginning at 6:00 p.m.. The presentation began after 7:00 p.m. President Liam O’Grady made introductory remarks.



Judge
Jason V. Morgan,
the Pupilage
Group Lead,
introduced the program. The topic was trade secrets. The story of Dr. Goldberg and Sal Cor’s Company, Endless Energy, LLC, continues. They have taken the energy industry by storm. Dr. Goldberg and his crack team of scientists and engineers are working around the clock to get “secret sauce” production

up to commercial scale. A key scientist, Dr. Edith “Shorty” Bunker, has left for Lovejoy Industries, taking with her key information about Goldberg Cold Fusion Reactor technology. (Hence the title of the program, “Get Shorty”.) Advance reactor sales have slowed down and investment dollars are only coming in at a trickle. The company’s CEO has gathered an elite team to meet with senior management to try to stave off the crises.

Jerry Skilling, the CEO of Endless Energy, was played by Walter D. Kelly, Jr. Karl Lay, VP Secret Stuff, was played by Robert T. Burns. Anthony Fastow, Competition Tiger Team Lead, was played by Williams Cheng. Matthew Koenig, ITC Counsel, was played by Tom M. Schaumberg.

Endless Energy has obtained a patent, while keeping the “secret sauce” a trade secret to avoid disclosing it to competitors. Under Virginia law, a trade secret is information that is





valuable because it is unknown and not readily ascertainable by others through legitimate means, and is subject to efforts that are reasonable under the circumstances to maintain its secrecy. Trade secrets, unlike patents, are generally protected under state law rather than federal law.

Trade secrets last as long as the information remains secret, unlike patents that expire after twenty years. Trade secrets are protected under both civil and criminal law, unlike patents where only civil remedies are available for infringement. Trade secrets are vulnerable to reverse engineering.

Shorty has signed a non-compete agreement, promising not to work for competitors in the design of fusion reactors for five years after leaving Endless Energy. For signing the agreement, she was given a honey-baked ham, a limited edition Endless Energy t-shirt, and a stipulation that if she worked for Endless Energy for fifteen years, eventually she would be promoted to the title of Chief Scientist. It was agreed that Virginia law would apply.

Under Virginia law, to be considered reasonable, a non-compete agreement must: 1. Be no more restrictive than is necessary to protect the employer's legitimate business interests. 2. Not be unduly burdensome on the employee's legitimate efforts to earn a livelihood. 3. Be consistent with sound public policy. Only two types of legitimate business interests are recognized: 1. Preventing former employees from poaching clients. 2. Preventing employees from sharing confidential information, trade secrets, or proprietary information. To be enforceable, a non-compete agreement must limit the scope and extent of restricted activity, be limited in geographic scope, and be limited in duration.



Section 337 (19 U.S.C. § 1337(a)(1)(A)) authorized the International Trade Commission ("ITC") to exclude the importation of articles resulting in unfair methods of competition and unfair acts. Patent attorneys soon recognized that patent infringement could be an "unfair act", and it has been used mainly to stop the importation of articles that infringe patents. However, it can also be used in cases of trade secret misappropriation. The ITC may exclude products made using misappropriated trade secrets, even the misappropriation occurs entirely outside the United States, and the domestic industry is not practicing the trade secret. The ITC uses "federal trade secret law" rather than state trade secret law, meaning the Restatement and the Uniform Trade Secret Act. The ITC could exclude products made abroad using Endless Energy's "secret sauce". The ITC has



in rem jurisdiction over the articles, so it does not have to have jurisdiction over the parties. The ITC can order discovery to be taken outside the United States, with the sanction that the information sought will be taken as conceded if it is not produced.

President Liam O'Grady made concluding remarks, and the meeting adjourned shortly after 8:00 p.m.

*Photographs were taken by Doug Pearson
Assistant Secretary-Treasurer*

Respectfully submitted,

Stephen Christopher Swift
Secretary-Treasurer