subsequent notice of appeal identified only the latter dismissal order, the 8th Circuit rejected defendants' argument that the plaintiff had waived any right to appeal the dismissal of the Section 1983 claim, relying on the "policy of liberal construction of notices of appeal where intent is apparent and there is no prejudice to the adverse party," and the plaintiff's express reservation of its appeal rights in its amended complaint. ***Spectra Comm'ns. Group, LLC v. City of Cameron***, ___ F.3d ___ (8th Cir. 2015).

■ **No abuse of discretion in denial of defendant's request for attorney's fees in copyright case.** The 8th Circuit found no abuse of discretion in a district court's denial of a defendant's request for attorney's fees in a copyright case, rejecting the defendant's arguments that her financial status and "the importance of the questions in litigation" were factors that the district court should have considered when weighing the defendant's fee request. ***Killer Joe Nevada, LLC v. Does 1-20***, ___ F.3d ___ (8th Cir. 2015).

■ **Claim preclusion barred second action; Minnesota law.** Applying Minnesota law and rejecting the plaintiff's argument that the Minnesota courts had not provided him a "full and fair opportunity to litigate," the 8th Circuit affirmed Judge Ericksen's dismissal of the plaintiff's claims on claim preclusion grounds where those claims arose "from the same set of factual circumstances" as the plaintiff's previous state court claims. ***Scheffler v. Minn. Dept. of Human Services***, ___ F.3d ___ (8th Cir. 2015).

■ **Multiple requests for stay pending appeal denied.** Applying the well-established four-part test governing requests for stays pending appeal, Judge Frank denied the defendants' request for a stay in the long-running Minnesota sex offender litigation, rejecting each of the defendants' arguments regarding their likelihood of success on appeal, and finding that the plaintiffs would be irreparably harmed if a stay was entered. ***Karsjens v. Jesson***, 2015 WL 7432333 (D. Minn. 11/23/2015).

Similarly, Chief Judge Tunheim rejected the defendant's request for a stay under the same four-part test, and also rejected the argument that the defendant's interlocutory appeal as of right divested the district court of jurisdiction over the action. ***McLeod v. General Mills, Inc.***, 2015 WL 7428548 (D. Minn. 11/20/2015).

■ **Order denying motion to update patent infringement claims affirmed; no good cause for delay.** Overruling objections to an order by Magistrate Judge Brisbois, Judge Montgomery found that the plaintiff was not diligent, and therefore had failed to establish the good cause required to support its motion to update its infringement and non-infringement claim charts in a patent case, where that request was made more than two years after the information was available to the plaintiff, nearly a year after the parties submitted a joint claim construction statement and four months after a claim construction hearing was held. ***Bombardier Recreational Prods. Inc. v. Arctic Cat, Inc.***, 2015 WL 8082522 (D. Minn. 12/7/2015).

■ **Motion to remand granted; related request for attorney's fees denied.** Judge Doty granted the plaintiff's motion to remand following the dismissal of her only federal claim, and denied the defendant's related request for attorney's fees and costs. ***Fagnan v. Target Corp.***, 2015 WL 6872460 (D. Minn. 11/9/2015).

■ **"Percentage-of-the-benefit" attorney's fee award to class counsel in TCPA litigation.** Rejecting the defendant's challenge to use of the "percentage-of-the-benefit" method, Judge Ericksen awarded class counsel $2.8 million in fees in a class action that resulted in a settlement valued at a minimum of $10 million. ***In Re Life Time Fitness, Inc. TCPA Litig.***, 2015 WL 7737335 (D. Minn. 12/1/2015).

■ **Objections to costs sustained in part, overruled in part.** Where the defendant challenged a number of categories of costs sought by the plaintiff, Judge Kyle sustained the defendant's objections to the plaintiff's attempt to tax a second copy of the trial transcript and the expense for expediting certain deposition transcripts, but overruled the defendant's other objections, including an objection relating to the costs associated with both transcribing and videotaping certain depositions. ***St. Jude Med. S.C., Inc. v. Hanson***, 2015 WL 7069650 (D. Minn. 11/13/2015).

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IMMIGRATION LAW

JUDICIAL LAW

■ **Lack of jurisdiction to review Board of Immigration Appeals' discretionary decision.** The 8th Circuit Court of Appeals found that it lacked jurisdiction to review the Board of Immigration Appeals' affirmance of the immigration judge's discretionary decision to deny the petitioners' applications for waiver of inadmissibility. It also found that the board did not err when it denied the petitioners' motions to remand on the grounds that the evidence submitted was not previously unavailable and credible nor sufficient to establish prima facie eligibility for asylum. ***Njie v. Lynch***, No. 14-2858, *slip op.* (8th Cir. 12/11/2015). *http://media.ca8.uscourts.gov/opndir/15/12/142858P.pdf*

■ **Conviction for pointing a firearm is a crime of violence; lack of good moral character for naturalization purposes.** The 8th Circuit Court of Appeals upheld the U.S. District Court's (Eastern District of Missouri) finding that the petitioner was unable to establish "good moral character" for naturalization purposes given that he had been convicted of committing an aggravated felony (pointing firearm at another person) years earlier in violation of South Carolina Code §16-23-410. "[V]iolation of § 16-23-410 is categorically a crime of violence under [18 U.S.C.] § 16(a) and constitutes an aggravated felony under [8 U.S.C.] §1101(a)(43)(F)." ***Reyes-Soto v. Lynch***, No. 14-3797, *slip op.* (8th Cir. 12/10/2015). *http://media.ca8.uscourts.gov/opndir/15/12/143797P.pdf*

■ **Failure to meet continuous physical presence requirement.** The 8th Circuit Court of Appeals held that substantial evidence supported the Board of Immigration Appeals' determination that the petitioner failed to meet the continuous physical presence required for the form of relief known as cancellation of removal. By failing to meet that requirement, the petitioner was ineligible for cancellation of removal. ***Torres-Balderas v. Lynch***, No. 14-3030, *slip op.* (8th Cir. 12/8/2015). *http://media.ca8.uscourts.gov/opndir/15/12/143030P.pdf*

■ **Lack of jurisdiction in matters of discretion.** The 8th Circuit Court of Appeals upheld the U.S. District Court's (Nebraska) decision that it lacked jurisdiction to consider whether USCIS failed to comply with the disclosure requirements under 8 CFR §103.2(b)(16) when it revoked the plaintiff-beneficiary's I-140 immigrant worker petition. Citing *Abdelwahab v. Frazier*, 578 F.3d 817, 821 (8th Cir. 2009), it observed, "[I]f the statute specifies that the decision is wholly discretionary, regulations or agency practice will not make the decision reviewable." ***Rajasekaran v.***

Hazuda, No. 14-3623, *slip op.* (8th Cir. 12/1/2015). *http://media.ca8.uscourts.gov/opndir/15/12/143623P.pdf*

■ **Failure to comply with immigration judge's request; petitioner waived application for relief.** The 8th Circuit Court of Appeals upheld the immigration judge's determination that the petitioner had waived his application for permanent residence by failing to comply with the court's request that he meet certain requirements for that application (i.e., pay a filing fee, get his fingerprints taken, submit an affidavit of support, and bring his wife to testify at his next hearing). It further found that the immigration judge had not committed error when denying the petitioner's request for a continuance since he had been given ample notice of those requirements and previously been given several continuances. ***Choge v. Lynch***, No. 14-2924, *slip op.* (8th Cir. 11/18/2015). *http://media.ca8.uscourts.gov/opndir/15/11/142924P.pdf*

■ **Lack of jurisdiction to review immigration judge's treatment of evidence.** The 8th Circuit Court of Appeals held that the non-permanent resident petitioner's claim amounted to a challenge of how the immigration judge and Board of Immigration Appeals weighed the evidence in support of his application for cancellation of removal. "Lemuz-Hernandez essentially seeks a finding that gives greater weight to the evidence of extreme violence and crime in Honduras and the psychological effect that environment would have on his children. This challenge to the agency's weighing of the evidence in support of Lemuz-Hernadez's claim for cancellation of removal is outside our jurisdiction to review." The petition for review was dismissed for lack of jurisdiction. ***Lemuz-Hernandez v. Lynch***, No. 14-3873, *slip op.* (8th Cir. 11/2/2015). *http://media.ca8.uscourts.gov/opndir/15/11/143873P.pdf*

ADMINISTRATIVE ACTION

■ **Fact Sheet: Refugee security screening.** On 12/3/2015, U.S. Citizenship and Immigration Services released a Fact Sheet outlining the Refugee security screening process, involving the United Nations High Commissioner for Refugees (UNHCR) as well as U.S. Departments of State and Homeland Security. The process includes background and biographic checks at several points as well as interview(s). *http://www.uscis.gov/sites/default/files/USCIS/Refugee,%20Asylum,%20and%20Int'l%20Ops/Refugee_Security_Screening_Fact_Sheet.pdf*

■ **Department of Justice and McDonald's settle immigration-related discrimination claim.** On 11/19/2015, the Department of Justice announced a settlement with McDonald's USA LLC and its corporate affiliates and subsidiaries over allegations that the company discriminated against immigrant employees of its restaurants. The department's Office of Special Counsel for Immigration-Related Unfair Employment Practices found the company required permanent residents to show a new permanent resident card when their original one expired, notwithstanding the fact that this is prohibited by law.

"Employers cannot hold lawful permanent residents to a higher standard by placing additional documentary burdens upon them during the employment eligibility verification process," said Principal Deputy Assistant Attorney General Vanita Gupta, head of the Civil Rights Division. "Requiring unnecessary documentation of individuals based on their citizenship or immigration status is discriminatory, and the Department of Justice will not hesitate to enforce the law and protect the rights of work-authorized immigrants. We commend McDonald's for its cooperation throughout this investigation and for committing to compensate its current and former employees who lost wages due to these practices."

McDonald's agreed to a fine of $355,000, 20 months of monitoring, and employee training devoted to the anti-discrimination provision of the Immigration and Nationality Act. *http://www.justice.gov/opa/pr/justice-department-settles-immigration-related-discrimination-claim-against-mcdonald-s*

■ **Foreign countries identified for participation in H-2A and H-2B nonimmigrant worker program.** On 11/18/2015, the Secretary of Homeland Security, in consultation with the Secretary of State, identified the countries whose nationals are eligible to participate in the H-2A and H-2B nonimmigrant worker programs in the United States, effective 1/18/2016. Factors considered when making this determination include: (1) the country's cooperation with respect to issuance of travel documents for citizens, subjects, nationals, and residents of that country who are subject to a final order of removal; (2) the number of final and unexecuted orders of removal against citizens, subjects, nationals, and residents of that country; (3) the number of orders of removal executed against citizens, subjects, nationals, and residents of that country; and (4) such other factors as may serve the U.S. interest. H-2A workers typically fill "seasonal and temporary agricultural jobs for which U.S. workers are not available" and H-2B nonimmigrant workers typically fill "temporary non-agricultural jobs for which U.S. workers are not available." 80 *Fed. Reg.* 72079-81 (11/18/2015). *https://www.gpo.gov/fdsys/pkg/FR-2015-11-18/html/2015-29373.htm*

■ **Terrorist designation revoked for Libyan Islamic Fighting Group.** On 12/9/2015, Secretary of State John Kerry announced the revocation of the terrorist organization designation for the Libyan Islamic Fighting Group (LIFG) pursuant to Section 219 of the Immigration and Nationality Act (8 U.S.C. §1189). 80 *Fed. Reg.* 76611 (12/9/2015). *https://www.gpo.gov/fdsys/pkg/FR-2015-12-09/pdf/2015-31038.pdf*

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INTELLECTUAL PROPERTY

JUDICIAL LAW

■ **Trademark: Abandonment and likelihood of confusion.** Krueger Law Firm, a personal injury law firm and licensee of the service mark 1-800-INJURED, filed suit against law firm Heimerl & Lammers (H&L) alleging that H&L infringed its mark through the use of the telephone number 612-INJURED and the website *www.612injured.com.* Both parties moved for summary judgment on the issue of likelihood of confusion. H&L also sought summary judgment on the issue that the 1-800-INJURED mark is invalid as abandoned. Subsequent to the summary judgment hearing, H&L sought permission to supplement its summary judgment record with an expert report that would refute plaintiff's expert on the issue of likelihood of confusion. The court ultimately found that the H&L failed to timely file the expert report as required under FRCP 6(b)(1).

In the Opinion and Order, the court found that H&L was precluded from arguing that the mark was invalid as abandoned. H&L argued that the issue of abandonment must still be considered because validity is an element of plaintiff's infringement claim and H&L challenged the mark's validity in its answer. The court was not convinced. The court viewed H&L's argument as simply an attempt to re-characterize an affirmative defense. Affirmative defenses must be pled or they are deemed waived. Denying allegations in an answer is not