

PRESS RELEASE

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**DRI –*The Voice of the Defense Bar* FILES AMICUS BRIEFS ON RELEVANT NATIONAL CASES
*More Than 35 Briefs Filed Year-to-Date and More Planned***

CHICAGO – (Oct. 10, 2011) John R. Kouris, executive director of DRI – *The Voice of the Defense Bar*, announced today that the organization, which has filed more than 35 amicus curiae briefs this year to date, plans to file additional briefs before year’s end including several during the fall term of the U.S. Supreme Court . An amicus curiae brief is filed state or federal appellate court level by a non-party who has interest in the subject matter or who is requested to file a brief by the court.

“As an organization representing more than 22,000 civil defense attorneys, and as ‘the voice’ of the defense bar, we feel it is important that we weigh in on relevant cases,” Kouris explained. “DRI’s committees carefully assess a large number of appellate cases that have an impact on our membership and their clients.” Kouris continued, “DRI considers cases only if the organization feels it has a meaningful and original contribution to make by raising or emphasizing arguments not raised or emphasized by the parties or other amici; likewise we also consider filing amicus briefs where the case is of special significance to the defense bar and the position supported is consistent with the mission statement and purpose of our organization.”

For instance, this past term, DRI filed amicus curiae briefs for the following cases:

Wal-Mart Stores, Inc. v. Dukes (U.S. Supreme Court) — This case involves what is believed to be the largest class certification ever approved (every woman employed by Wal-Mart since 1998). Carter Phillips of Sidley & Austin’s D.C. office authored DRI’s brief on the merits. The Court issued its defense-favorable ruling on June 20, 2011.

AT&T Mobility LLC v. Concepcion (U.S. Supreme Court) — The issue is whether the Federal Arbitration Act preempts state law that bars the waiver of class-action arbitration, even though the arbitration clause does not preclude the plaintiff from otherwise pursuing an individual claim. On May 24, 2010, the Court granted cert. Kevin Newsom of Bradley Arant’s Birmingham office authored DRI’s briefs at the cert stage and the merits stage. The Court issued its defense-favorable ruling on April 27, 2011.

AEP v. Connecticut (U.S. Supreme Court) —The issue is whether federal law allows states and private parties to sue utilities for contributing to global warming. DRI’s merits brief was authored by John Parker Sweeney and Sky Woodward (Womble Carlyle Sandridge & Rice) and Mike Nilan (Nilan Johnson Lewis). The Court issued its defense-favorable ruling on June 20, 2011.

Erica P. John Fund v. Halliburton (U.S. Supreme Court) — The question in this case is whether, in a securities action alleging that the defendants committed a fraud on the market, the plaintiffs must prove that the alleged fraud caused a drop in stock prices in order to get class certification, or is that a question that should be left for trial. DRI’s amicus brief on the merits was authored by Timothy R. McCormick, Geoge Lucas Ashley and Richard B. Phillips of Thompson & Knight in Dallas and filed on March 30, 2011. The Court issued its decision, which did not address the arguments in DRI’s brief, but rather remanded them to the Fifth Circuit, on June 6, 2011.



Philip Morris USA v. Jackson (U.S. Supreme Court) — The case involves questions of due process and the constitutionality of procedures used by state courts to facilitate class actions. DRI’s brief in support of cert was authored by Kevin C. Newsom, Anna Manasco Dionne and Jack L. Wilson all of Bradley Arant Boult Cummings, LLP and filed in the Court on January 3, 2011. Petition denied on June 29, 2011.

Howell v. Hamilton Meats & Provisions, Inc. (California Supreme Court) — The issue is whether a plaintiff can recover medical expenses that are “billed” or only the amounts “paid.” DRI has joined the brief filed by the Association of Southern California Defense Counsel. A defense-favorable ruling was issued on August 16, 2011.

And, upcoming cases in which DRI has agreed to participate are as follows:

Minneeci v. Pollard (U.S. Supreme Court) — The issue is whether to recognize a *Bivens* cause of action against an employee of a private prison contractor. DRI’s brief on the merits was written by Raymond Cordozo of Reed Smith’s San Francisco office and filed on July 29, 2011.

Mowdy v. Beneto Bulk Transport (United States Court Appeals, Ninth Circuit) — This case addresses the issue of class action certification in wage and hour litigation, and involves interpretation of the Federal Rules of Civil Procedure and the Fair Labor Standards Act (FLSA). DRI jointly filed a brief, authored by Kevin Ranlett of Mayer Brown in Washington, D.C., with the American Trucking Associations and the United States Chamber of Commerce. Argument date is pending.

CompuCredit v. Greenwood (U.S. Supreme Court) — This case involves the enforcement of arbitration agreements under the Credit Repair Organization Act. Linda Coberly of Winston & Strawn in Chicago authored DRI’s brief on the merits, which was filed on June 30, 2011.

Lewis v. Humbolt Acquisition (Sixth Circuit Court of Appeals) — The issue in this case is whether, under the Americans with Disabilities Act, a disability upon which a discrimination claim is based need be the “motivating factor” in an employee’s termination, as opposed to the “sole” factor for the termination, the latter being current precedent in the Sixth Circuit. Todd Presnell of Miller & Martin in Nashville, Tennessee, authored DRI’s brief, which was filed August 11, 2011.

Florence v. Board of Chosen Freeholders of the County of Burlington (U.S. Supreme Court) — The issue in this case is whether a policy of conducting strip searches of arrestees, even those charged with nonindictable offenses, during the intake process is permissible under the Fourth Amendment as reasonable. DRI’s brief on the merits, authored by Mary Massaron Ross of Plunkett Cooney in Detroit, was filed on August 26, 2011.

First American Financial Corp. v. Edwards (U.S. Supreme Court) — The issue in this case is whether the alleged violation of a statute provides the injury necessary for Article III standing under statutes (RESPA here) that provide statutory penalties for technical violations. The plaintiff in this case has no actual injury, but the Ninth Circuit held violation of the statute alone was injury enough to establish standing. DRI’s brief on the merits, which was joined by the ASCDC, was authored by Mary Massaron Ross of Plunkett Cooney in Detroit and filed on August 26, 2011.

Kurns v. Railroad Friction Products Corp. and Viad Corp (U.S. Supreme Court) — This is a product liability lawsuit against manufacturers of railroad locomotive parts. Plaintiffs allege that the parts are defective because they contain asbestos and that defendants failed to warn about the danger. The question presented is whether plaintiffs’ claims are preempted by the Locomotive Inspection Act (LIA), 49 U.S.C. §§ 20701 *et seq.* DRI’s brief on the merits was filed on October 11 and was authored by Diane Bratvold of Briggs and Morgan in Minneapolis.

U.S. Steel Corp. v. Milward (U.S. Supreme Court) — The question in this case is whether a district court abuses its discretion in excluding as unreliable expert testimony that purports to resolve open scientific questions in favor of one party simply by asserting an exercise of “judgment” about the “best” explanation of the available evidence. DRI’s brief in support of certiorari is due October 12 and will be authored by Carter Phillips of Sidley Austin in Washington, D.C.

State Farm Mutual Automobile Insurance Co. v. Beddell (U.S. Supreme Court) — The case involves an insurer’s state regulatory obligation to report suspected fraud, and whether the West Virginia circuit court exceeded its authority by issuing a protective order in the underlying personal injury lawsuit that restricted the manner in which State Farm would be permitted to use plaintiff’s medical records. The brief in support of certiorari, authored by Deanne Maynard was filed on September 26.

Authoring and filing these briefs is not insignificant. DRI committees spend considerable time researching and tracking cases of significant scope and impact. It is not unusual for the author of DRI’s brief to spend dozens of hours researching and writing the briefs. But the organization feels that this is a vital process in accurately and effectively representing its many members. “As the largest organization in the world who defend civil litigation we want to make sure that we’re recognized as thought leaders and that our voices are heard in weighing in on some of the country’s most significant and meaningful cases,” added Kouris.

About DRI – The Voice of the Defense Bar

DRI – *The Voice of the Defense Bar* is an international organization of defense attorneys and corporate counsel that is recognized as a thought leader and an advocate for the defense bar at the national and state level, as well as in Europe. With more than 22,000 members, DRI provides members and their clients with access to world-class education, legal resources and numerous marketing and networking opportunities that facilitate career and law firm growth. For more information log on to www.dri.org.

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