



The Voice of the
Defense Bar™

The Voice

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This Week's Feature



Deconstructing Damages in Architect or Engineer Malpractice Actions

By James W. Walker and J. Brandon Sieg

No design professional is perfect all the time. At some point, they make mistakes—specify the wrong materials, leave out a required element, overlook a code requirement, bust a calculation, among other things. Sometimes they catch and correct their mistakes before any harm occurs. Sometimes, though, mistakes in construction documents cause our clients to spend “extra” money or the contractor to lose time, or both. What is the design professional’s financial responsibility to the client?

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- Indiana

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Quote of the Week

“[I]f a great many people are for a certain project, is it necessarily right? If the vast majority is for it, is it even more certainly right? This, to be sure, is one of the tricky points of democracy.”

— [Frances Perkins](#) (b. Apr. 10, 1880).

This Week's Feature

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No design professional is perfect all the time. At some point, they make mistakes—specify the wrong materials, leave out a required element, overlook a code requirement, bust a calculation, among other things. Sometimes they catch and correct their mistakes before any harm occurs. Sometimes, though, mistakes in construction documents cause our clients to spend “extra” money or the contractor to lose time, or both. What is the design professional’s financial responsibility to the client?

The standard of care for design professionals is to perform services with the same degree of care and skill as “those ordinarily skilled in the business.” See, e.g., AIA B101-2017, § 2.2 (“The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances.”). Unless the contract says otherwise (and it shouldn’t!), the architect does not ordinarily promise a perfect plan. The cases emphasize that the owner does not ordinarily bargain for infallibility in the performance of design services.

Defense Considerations for Damages in Architect/Engineer Malpractice Cases

So this raises some interesting questions: How many mistakes can a design professional make before being financially responsible to the owner? Does it matter if the architect or engineer (A/E) makes lots of tiny mistakes or one giant one? Does it matter if the mistake is an error or an omission? Is there a dollar threshold, either by individual mistake or in the aggregate? Here are some things to keep in mind when your A/E client’s client comes asking for money.

The “Betterment” Principle

Suppose the construction documents (CDs) show a light fixture but omit wiring and a switch. The contractor’s price does not include the cost of the wiring, the switch, or the labor to install them. Naturally, the owner has always wanted a switch, so the contractor issues a change order to install one and wire it to the light. Should the design

professional pay 100 percent of the change order? No. The owner received something of value in the change order—a switch and wiring—that was not included in the general contractor’s bid. Had the plans included these items, the bid would have been correspondingly higher and the owner would have paid the higher price. Should the design professional pay *any* of the change order? That’s more complicated...

The “Out-of-Sequence” Principle

Suppose in our example that the omission of a switch is not discovered until after the electrician has demobilized following rough-in and after drywall has been installed. Now the work required to install and wire the switch includes remobilizing the electrician and tearing out and replacing some drywall. The cost of the switch and wiring has not changed, so the owner still pays for that, but labor and material costs are higher now because the work is done out of sequence. The owner gets no value from that portion of the change that is the added costs of out-of-sequence work, so that portion of the change order is the design professional’s responsibility, unless...

The “You Didn’t Bargain for Perfection” Principle

Suppose in our example that the switch and wire change order cost is \$5,000, and of that, \$2,500 represents the out-of-sequence cost. Suppose also that the guaranteed maximum price (GMP) for the job is \$5 million. Whether we look at the total cost of the change or just the out-of-sequence added cost, the cost of the omission is a miniscule fraction of the total job cost and should be within the expected range of added costs, given the less than perfect standard, unless...

The “Death by a Thousand Cuts” Scenario

Suppose in our example that the switch and wiring change order is one of 315 distinct change orders on the job with an aggregate total cost of \$300,000 and aggregate “out-of-sequence” costs of \$200,000. Now the added costs are a more sizeable percentage of the total job cost—4 percent to 6 percent, depending on what counts. Suppose the industry’s track record shows that on average, jobs of

this type and delivery method typically experience change orders in the range of 2 percent to 3 percent of the cost of construction. Does that provide an allowance of sorts? Does the design professional pay for all errors and omissions from dollar one, or just for the compensable costs in excess of the tolerance threshold? The case law is not clear on this point.

How About Changes Originating from the Owner or the Authority Having Jurisdiction?

Suppose in our example that 212 of the 315 change orders are either owner initiated or required by the authority having jurisdiction (AHJ). Does that mean that the design professional can disregard those costs when determining whether the level of imperfection in his or her services is tolerable? With respect to owner-initiated changes, the answer should be “yes.” With respect to AHJ-related changes, the picture is murkier. There is certainly an expectation that the design professional is well versed in code requirements and preferences in the jurisdictions in which he or she practices, but we all know that sometimes there is just no predicting who will be reviewing the plans or what will be required. What if the design professional took some chances on what would get through plan review, hoping to save the owner money if successful? Again, muddy.

What About Fast-Track or Design-Build Projects?

Suppose in our example that the project was fast tracked or was a design-build project. Does that affect the tolerable error rate? The answer is definitivel...maybe! The notion of a *financial* error rate reflecting the expected level of imperfection in design services is not well developed in the courts. However, there is no reason why the chosen style of project delivery may not also have a higher or lower error rate associated with it. Be sure to consider your jurisdiction’s version of the economic-loss rule if your architect client is sued by a project owner in the design-build context. Similar to so many things in this area, it depends on the industry’s experience, and data of this sort is scarce. It is certainly worth considering the complexity and speed of the project when assessing the tolerance for imperfection.

Pre-litigation Considerations for Your A/E Client

Considering the legal defense issues described above, you may want to discuss the following concepts with your A/E clients to better prepare them for future claims:

- Consider negotiating terms in the owner–architect agreement to address change order premiums. By establishing a presumption about the maximum reasonable “retail” markup, the design professional can begin to limit his or her exposure in unexpected circumstances. As a practical example, the Commonwealth of Virginia handles this issue in state-let design services contracts by establishing that the cost of work associated with a change order is presumed to be 15 percent greater than the cost that would have been included in the original bid. Commonwealth of Virginia, CO-3a, *Terms and Conditions of the A/E Contract* (2013). The A/E is free to prove a lower premium. In other settings, nothing precludes the owner and design professional from crafting their own unique “rules” on this issue. Because sorting out the actual retail markup can be complex and expensive, having a “default cap” can be quite useful.
- Encourage the owner to establish, during the bid stage, maximum percentage markups to be applied in change orders to accommodate the contractor’s overhead costs and profit. Remember to apply these percentage markups to *deductive* change orders, for which the overhead is no longer required.
- Encourage the owner to obtain sufficient pricing information from the contractor during the bid stage to evaluate future change orders. Information such as unit pricing in the contractor’s bid will be valuable to evaluate the reasonableness of change order costs. This works best in GMP programs without competitive bidding at the owner–contractor level.
- Discuss change order documentation requirements with the contractor early to clarify expectations.
- Insist on documentation from the contractor and subcontractors detailing anticipated net unit costs (reflecting cost reductions available to the contractor or subcontractors and supported by quotes from suppliers and manufacturers) and labor costs (actual cost per hour) associated with proposed change orders. Discourage (and reject when appropriate) unsupported “contingency” values in the change order pricing.
- Require the contractor to state whether change order work reflects higher unit costs. You might be surprised how many times the contractor says “no” (to look good to the owner), even if the real answer is “yes.”
- When practical and warranted by the dollars involved, independently estimate the anticipated cost of a

proposed change to compare against the contractor's proposal.

- Distinguish time premiums from unit-cost premiums. If the change order arises from a shortage of materials, has the contractor still provided a premium for subcontractors who are currently on-site? Are full rental costs included for on-site equipment that is not currently needed for other tasks? Even if there is a need to mobilize subcontractors, how is the cost supported?
- After reviewing the change order documentation, clearly document to the owner, in writing, all concerns or objections with the proposed costs or need for the change order.

Conclusion

Every relationship and every project is unique, so no one approach fits all circumstances. These general principles

are intended as an introduction to damages considerations when defending A/E malpractice claims and counseling clients during contract negotiations.

[James W. Walker](#) and J. Brandon Sieg of **Vandeventer Black LLP**, Richmond, Virginia, are admitted to practice in Virginia and Washington, D.C., and practice extensively in the mid-Atlantic region. The authors devote a significant portion of their practice to defense of design professionals, accountants, lawyers, and other licensed professionals in malpractice and disciplinary claims and to helping licensed professionals manage risk through contract negotiation, education, and early problem solving. Mr. Walker is a member of the DRI Professional Liability Committee. This article represents the authors' viewpoints, is intended for general information purposes only, and does not constitute legal advice.

And The Defense Wins

Keep The Defense Wins Coming!

Please send 250–500 word summaries of your “wins,” including the case name, your firm name, your firm position, city of practice, and e-mail address, in Word format, along with a recent color photo as an attachment (.jpg or .tiff), highest resolution file possible (*minimum* 300 ppi), to DefenseWins@dri.org. Please note that DRI membership is a prerequisite to be listed in “And the Defense Wins,” and it may take several weeks for *The Voice* to publish your win.

Matthew J. Kelly



Matthew J. Kelly, a DRI member and partner with **Roemer Wallens Gold & Mineaux LLP** in Albany, New York, obtained a summary judgment and dismissal of the complaint in *Kimberly Saunders as Parent and Natural Guardian of Oliva Saunders v. Bounce Around, Inc.*, which was a matter that was brought against an indoor play facility for children located in Clifton Park, New York. The case was brought in the New York Supreme Court, Greene County.

The nine-year-old plaintiff was injured while she was on an inflatable slide called the “Vertical Rush.” On her third trip down, she contended that she struck her arm on the side of the ride and suffered serious injury. Specifically, the infant suffered a comminuted fracture of the right olecranon and proximal ulna, which resulted in an open reduction, internal fixation surgical treatment.

The defendant moved for summary judgment, contending that the premises were reasonably safe and that the claim brought by the plaintiff was barred by assumption of risk.

The plaintiff opposed the motion and submitted an affidavit from the plaintiff’s expert, Brian D. Avery, of Gainesville, Florida, who was identified as an amusement ride and device safety expert and recreational specialist. He opined that the facility was improperly supervised and that the defendant deviated from accepted safety and supervisory policies and procedures. Specifically, he claimed that the defendant violated ASTM standards for inflation of amusement slides, which contributed to the defective condition of the slide and caused the infant plaintiff’s injury.

The court found that the plaintiff had failed to make any connection between those claims and the injury to the infant and dismissed the opinion of Mr. Avery and the action.

Gary M. Burt



DRI member **Gary M. Burt**, managing director at **Primmer Piper Eggleston & Cramer PC** in Manchester, New Hampshire, successfully defended his client, Vermont Mutual Insurance Company (Vermont Mutual) against a claim of bad-faith handling of a first-party mold claim, obtaining a dismissal at the end of the plaintiff’s case. The matter, *Birch v. Vermont Mutual Insurance Company*, was brought in the Washington County (Vermont) Superior Court and tried over two days in November 2018.

The matter arose from mold infestation of the plaintiff’s home in Sutton, Vermont. The insured had noticed mold developing on the surface of interior walls of the home and made a claim for mold remediation under the mold endorsement of the policy. The endorsement provided limited coverage for mold hidden within walls. Vermont Mutual assigned an independent adjuster to investigate and later asked an engineer to inspect the premises. Both concluded that the only visible mold was located on the interior surface of the walls and probably was the result of excess moisture in the home. The insured and (later) her attorney were advised that if the wall cavity were to be inspected, the insured would have to open up the walls. When she later did so, no further evidence of mold was discovered.

Dissatisfied with the denial of the claim, her attorney filed suit, claiming breach of the insurance contract, bad-faith denial of the claim, breach of the covenant of good faith and fair dealing, and violation of the Vermont Consumer Protection Act/Insurance Trade Practices Act. Rather than moving to dismiss some of the questionable claims, Vermont Mutual decided to proceed to trial and test the legitimacy of the claims by motion to dismiss at the end of the plaintiff’s case.

The plaintiff’s counsel called as witnesses the independent adjuster, the in-house adjuster, and the adjuster’s supervisor, as well as the engineer who had been hired by Vermont Mutual to investigate the matter. The insured also testified. The evidence adduced established that the home had prior moisture issues, as evidenced by photos taken by the engineer.

In trying to establish both a breach of the contract and bad faith, the plaintiff’s counsel maintained that Vermont Mutual should have opened up the wall, and to the extent that the plaintiff had provided access to the wall cavity,

And The Defense Wins

there was evidence of black mold that at the very least required further evaluation. No expert testimony was presented, however, supporting that contention.

At the end of the plaintiff's case, the court granted dismissal. The court found that the evidence was insufficient

to establish any of the claimed causes of action. The court noted that Vermont Mutual had investigated adequately, and the evidence was simply insufficient to establish that had Vermont Mutual done more, mold would have been discovered.

DRI News

DRI Announces Its New Young Lawyer Membership Package



DRI is pleased to introduce our new membership packages for current young lawyer members who are up for membership renewal. This new program provides young lawyers with the convenience of a “one-time

ask” to their firm administrators, as well as an opportunity to budget accordingly and save nearly 20 percent on membership and CLE for the year.

Package 1: Young Lawyer Renewal Membership Annual Meeting/Seminar Discount

- Membership Fee: \$185
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- Member Cost: \$1,500*

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- Membership Fee: \$185
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Click here to renew your membership online and take advantage of this new offer! Contact DRI Customer Service at custservice@dri.org or **312.795.1101** for more details on the **DRI Young Lawyers Membership Packages** today. *Note:* To take advantage of the Young Lawyer Membership Package, you must be a current DRI young lawyer and within five years of your bar date.

* Some restrictions apply: Nonrefundable rate; DRI seminar cancellations policy apply; Package is nontransferrable.

Pathway to Partnership: Unlock the Mystery Behind Partnership



Pathway to Partnership [webinar](#) series consists of six webinars

designed to help mid-level associates, senior associates, and young partners learn how to advance to partner while managing the responsibilities of their careers as practicing lawyers.

Learn from DRI’s finest managing partners, law firm leaders, and newly appointed partners how to navigate the road from junior associate to partner.

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- The Partner’s Skill Set
- Best Practices: Drafting an Individual Business Development Plan
- Making Oprah Proud: Becoming a Public Speaker Extraordinaire
- Leading from Where You Are
- You’ve Become a Partner: Now What?

For as little as \$100, DRI members have **24/7 access** to watch all six sessions at their convenience. If you would like to purchase the sessions a la carte, they are \$25/session. Nonmember pricing is also available. Click [here](#) for details and to purchase the series today!

Exceptional CLE and Networking Amid Washington, D.C., Sights and Sounds: DRI Insurance Bad Faith and Extra-Contractual Liability Seminar

By W. Edward Carlton



DRI invites you to attend the insurance industry's top event of the summer, the DRI Insurance Bad Faith and Extra-Contractual Liability Seminar in Washington, D.C., from June 5–7 2019. For those who have previously attended

this seminar, you know that the DRI Bad Faith Seminar is the foremost educational event for insurance executives, claims professionals, and outside counsel whose practice touches upon insurance bad faith. This year is no exception: the faculty is comprised of exceptional outside and in-house counsel in this space. Among the faculty are representatives of some of the leading domestic property and casualty insurers.

This year's three-day seminar offers a tremendous opportunity to engage with distinguished insurance industry leaders, experts, and coverage lawyers on emerging bad faith issues.

If you are interested in improving your litigation skills, you can sign up for the Litigation Skills Workshop, presented by the DRI Litigation Skills Committee, in conjunction with the DRI Insurance Law Committee, beginning Wednesday at noon. The training will be provided by a panel of industry professionals and experienced attorneys and is designed to teach attendees how to prepare and defend Rule 30(b)(6) witnesses. Wednesday will continue

with a discussion of hot new decisions and ways to prepare and try cases.

Thursday begins with the latest trends and developments in bad faith law. Take in sessions about defending institutional bad faith claims. Ethical issues will be a main focus as we discuss defense counsel's ethical conundrums presented by bad faith setups and consent judgments. The day concludes with practical advice for mediating and defending bad faith lawsuits.

Friday rounds out the seminar with presentations on trends regarding punitive damages, best practices, the new ALI Restatement, the use of jury consultants and first-party property claims.

Not only will attendees gain insight into the latest trends and legal developments in bad faith law, they will also enjoy several top-notch networking opportunities with insurance industry peers while experiencing the sights and sounds of Washington, D.C. Be sure to register early to guarantee your spot.

We look forward to seeing you there!

W. Edward Carlton, of **Quilling Selander Lownds Winslett & Moser PC**, Dallas, is the Program Chair for the 2019 DRI Insurance Bad Faith and Extra-Contractual Liability Seminar scheduled for June 5–June 7, 2019, at the Westin Washington, D. C., City Center, Washington, D.C.

DRI Cares

DRI Winter Board Meeting Attendees Give to Teddy Bear Care Foundation

Cancer sucks. Period. But DRI leaders took steps to make the lives of kids going through the treatment process just a little bit better. During the winter meeting of the DRI Board of Directors, attendees donated thousands of items, including glitter pens, stuffed animals, and every color of Crayola imaginable—wrapped in unicorn and donut

wrapping paper—to the **Teddy Bear Care Foundation**. The items were received with open arms and big smiles. #DRICares thanks everyone who donated and everyone who clicks on the link to donate in the future. <https://www.teddybearcancerfoundation.org>.



DRI Cares



LegalPoint

Honing Skills to Demonstrate Value

One of the biggest issues that still face litigators, particularly defense litigators, is that while trial experience remains highly valued to clients, firms, and opposing counsel alike, the opportunity to try cases is rare. It seems that the perceived value of that experience may in fact be increasing as the supply of experienced trial attorneys dwindles. What can we do?

The goals may be multifaceted, but the answer is in one respect simple: we must continue to hone our skills. With strong litigation skills, we take away any so-called advantage from plaintiffs' attorneys' trial experience, we can obtain our clients' desired resolution of claims, and consequently, we can demonstrate our value to clients and to firms.

Please take advantage of one of the many offerings that [DRI LegalPoint™](#) has to offer and review this March 2017 *For The Defense* [article](#). DRI LegalPoint™ (formerly DRI Online) is a DRI members-only service that provides exclusive access to a vast online library of DRI articles, books, and materials. Members can search thousands of documents and filter them by practice area and resource. DRI LegalPoint™ includes content from:

- *For The Defense*
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- Defense Library Series (DLS) NEW
- Seminar Materials
- DRI Defense Wins Reporter

On-Demand

Friendly Persuasion: Drafting and Using High-Impact Amicus Briefs

Preparation and use of amicus curiae (friend of the court) briefs are an important part of appellate practice in federal and state courts. They give individual corporations, trade associations, professional groups, and other organizations a voice—a direct line of communication to appellate courts—on the significance, practical effects, policy implications, and merits of important legal issues. This webinar will cover the strategic use of amicus briefs, the rules governing their preparation and submission, and amicus brief

style and content. In-house counsel and outside attorneys who manage or handle appeals and may want to solicit amicus support, as well as attorneys who are engaged to draft (or would like to be engaged to draft) amicus briefs, will benefit from the webinar.

If this [On-Demand](#) offering from DRI sounds valuable to you, [click here](#) to take advantage and check back each week in *The Voice* for a newly featured item.

Upcoming Seminars

Business Litigation Super Conference, May 8–10, 2019



to register.

Top in-house counsel, judges, and attorneys from across the country will meet in Austin, Texas—the Live Music Capital—for this one-of-a-kind seminar. Along with stimulating lectures, this seminar offers marvelous opportunities to network with preeminent attorneys and in-house counsel and experience what makes Austin one of the top cities in which to live. Moreover, the seminar has focused breakouts in the areas of class actions, cybersecurity/data breach, and government enforcement. In addition, the DRI Intellectual Property Litigation Committee is hosting its seminar at the same time in adjacent rooms, and attendees are free to attend presentations in either seminar. Register now for this “can’t miss” event for any business litigator. Click [here](#) to view the brochure and

Intellectual Property Litigation, May 8–10, 2019



have the opportunity to join the Young Lawyers Breakout on Wednesday afternoon. Click [here](#) to view the brochure and to register.

This year, we take a look at a variety of issues relevant to IP litigators—ranging from building a strong case for attorneys’ fees to IP issues from an in-house perspective. We will explore emerging issues in patent, copyright, and trademark law, focusing on industries such as video gaming, and provide practical, cutting-edge strategies for issues that IP litigators face every day, such as consumer surveys. We will join in a plenary session with the DRI Commercial Litigation Committee, where we will learn insights from Alberto Gonzalez, former U.S. Attorney General and White House Counsel to President George W. Bush; explore the pros and cons of arbitration; and hear the perspective of a retired judge on the changing landscape of truth in the United States. Our young lawyers also

Employment and Labor Law, May 8–10, 2019



DRI’s 42nd annual Employment and Labor Law Seminar is the preeminent educational and networking event for management-side labor and employment attorneys, in-house counsel, human resources professionals, and EPLI representatives. Always intensely practical and accompanied by superior written materials, this seminar is a must-attend for experienced practitioners, as well as for those who are just getting started in labor and employment law. Don’t miss this opportunity to learn from some of the best practitioners and professionals in the labor and employment arena. Click [here](#) to view the brochure and to register for the program.

Upcoming Seminars

Retail and Hospitality, May 8–10, 2019

dri	Retail and Hospitality Seminar
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Over two days, you will hear experts in their fields discuss trial tactics, settlement strategies, legal updates, and business trends. Highlights include technology and data privacy topics, in-house perspectives from the biggest hospitality and retail companies, and special breakout sessions for corporate counsel, young lawyers, and workers' compensation practitioners. In addition to top-notch CLE and networking, endless entertainment, beautiful weather, and family fun make Orlando one of the top travel destinations in the world. We hope to see you in Orlando! Click [here](#) to register.

Cannabis Law, May 15, 2019

dri	Cannabis Law Seminar
	May 15, 2019 Washington, D.C.
REGISTER TODAY	

Thirty-three states have legalized medicinal cannabis and 10 states have legalized the recreational use of cannabis. However, the combination of the Controlled Substance Act (Schedule One), the resignation of Jeff Sessions, and ongoing regulatory uncertainty presents a barrier to full realization of the potential of this \$50 billion-plus business. This quickly developing sector affects virtually every area of the law and provides opportunities to those with the knowledge base to guide clients and companies deftly through a shifting regulatory and legal landscape. DRI's Cannabis Law Seminar provides you with subject matter experts who will share with you the knowledge and strategies needed by professionals, businesses, and insurers to traverse the complex pitfalls and prospects of

cannabis legalization successfully.

BONUS: Members can attend *both* the Drug and Medical Device Litigation (May 16–17) and the Cannabis Law (May 15) seminars for *only* \$1,185! Contact customer service at 312.795.1101 to register for both seminars. Click [here](#) to view the brochure and to register!

Drug and Medical Device Litigation, May 16–17, 2019

dri	Drug and Medical Device Litigation Seminar
	May 16–17, 2019 Washington, D.C.
REGISTER TODAY	

Please join us in our nation's beautiful capital for the 2019 Drug and Medical Device Seminar. This seminar will provide more opportunities than ever to network with in-house counsel, leading pharmaceutical and medical device lawyers, and friends old and new. You will also hear an FDA insider's views regarding issues facing the industry and top appellate attorneys' thoughts regarding recent and relevant decisions affecting how we defend our clients. These and other top-notch programs make this seminar the "go-to" event year after year for practitioners in the pharmaceutical and medical device defense arena.

BONUS: Members can attend *both* the Drug and Medical Device Litigation (May 16–17) and the Cannabis Law (May 15) seminars for *only* \$1,185! That's only \$190 more than the cost of the Drug and Medical Device Seminar alone! Register before April 15, 2019. Contact customer service at 312.795.1101 to register for both. Click [here](#) to view the brochure and to register!

Upcoming Webinars

Avoiding Preemption Under *Mensing* and Defeating Forum Shopping in Drug and Medical Device Litigation, April 16, 2019, 12:00 pm–1:00 pm



Motions to dismiss are a common vehicle to challenge the propriety of new lawsuits in drug and medical device cases. In new cases involving generic drugs, a motion to dismiss based on preemption is the typical response, but plaintiffs have been looking for ways around the effects of *Mensing*. And in cases involving multiple plaintiffs, motions on venue and joinder grounds are typically filed, although the laws of the various jurisdictions present challenges to these efforts. With an ever shifting tide, it is important to stay current on these topics. Register now to learn from top attorneys about the latest developments and the successes of these defenses. Click [here](#) to register.

The Reverse Reptile: Turning the Table on Plaintiff's Counsel, April 24, 2019, 12:00 pm–1:30 pm



Since 2009, Don Keenan and David Ball, the Reptile founders, claim to have generated \$7.7 Billion in settlements and verdicts. While that figure is staggering, it is very important to know that several well-prepared defendants have crushed the Reptile attack in several areas of litigation. These defendants and their attorneys have adopted their own “anti-Reptile” tactics that have been highly effective in discovery and trial. On the 10-year anniversary of the plaintiff’s Reptile Revolution, with no end in sight and their membership bursting at the seams, it is vital for the defense bar understand the past and plan for the next 10 years of Reptile maneuvers. Key individuals and entities have empirically studied the evolving Reptile methodology and have tracked and defeated newer Reptile tactics. Disseminating this information, as well as newest “anti-Reptile” tactics across the defense bar is essential to future success. The newest of these tactics is called the “Reverse Reptile,” in which defense counsel can turn the tables on the plaintiff, experts, or other parties in a case. Click [here](#) to register.

State Membership Chair/State Representative Spotlight

Indiana



State Membership Chair

Katie R. Osborne, Attorney, Riley Bennett Egloff LLP

Areas of Practice: Civil litigation, medical malpractice defense, employment law, and business litigation.

DRI member since 2017.

Katie's experience with DRI: "Although my role as membership chair is my first time serving in an official capacity with DRI, I have enjoyed the benefits of membership since joining. I attended a seminar which focused on defensive strategies for dealing with a common plaintiff's approach to medical malpractice cases which was not only informative but also practical. That seminar is only one exemplar of the quality of all of DRI's research materials."

Fun Fact: "I love to exercise and Orange Theory Fitness is my most recent obsession. I am also a new mom with my son born January 3, 2019."



State Representative

James W. Hehner, Partner, Hehner & Associates LLC

Areas of Practice: Catastrophic and complex litigation in state and federal courts, including business litigation, wrongful death, and catastrophic damages caused by all types of casualty risks, including transportation, construction, product liability, and fires.

DRI member since 1994.

Jim's experience with DRI: "My involvement in DRI has made me a better lawyer and enhanced my practice. The DRI resources and databases (research, articles, and expert witnesses) are invaluable. I have made many great friends during my time with DRI and have received client referrals from DRI members, as well as made client referrals to other DRI members. Get involved. You will find it both fun and rewarding."

Fun Fact: "I am a 'backyard' astronomer, preferring to view the earth's moon and planets with my telescope. I am also a poor guitar player, and watercolor painter."

New Member Spotlight

Eric K. Grinnell, Carr Law Office LLC



[Eric K. Grinnell](#) is an attorney with the **Carr Law Office LLC** in Hudson, Ohio, where he practices in the areas of insurance defense, insurance coverage, and general litigation.

Mr. Grinnell is a member of the Ohio Association of Civil Trial Lawyers, the Ohio State Bar Association, and Cleveland-Metropolitan Bar Association. He is admitted to practice in the state of Ohio, the U.S. District Court

of the Northern District of Ohio, and the U.S. District Court of the Southern District of Ohio.

He earned his J.D., *cum laude*, from Cleveland-Marshall College of Law and his B.A. degree, *cum laude*, from the College of Wooster, where he was a four-year varsity football player.

Mr. Grinnell is a frequent lecturer for the National Business Institute on the topics of evaluating personal injury claims and insurance coverage issues.

Quote of the Week

“[I]f a great many people are for a certain project, is it necessarily right? If the vast majority is for it, is it even more certainly right? This, to be sure, is one of the tricky points of democracy.”

— [Frances Perkins](#) (b. Apr. 10, 1880).