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This Week's Feature



Preparing Nursing Homes and Assisted Living Facilities for the Unexpected When Mother Nature Unleashes Her Fury

By Kirsten K. Ullman

Every state (as well as the federal government) has detailed rules and regulations regarding emergency preparedness. However, nothing could have prepared the operators of Florida's nursing homes and assisted living facilities for the fury of Hurricane Irma in September of 2017. Multiple unexpected and costly lessons have been learned in the aftermath of this historic storm, with resultant litigation brought by the plaintiffs' bar to cash in on the natural disaster. While this article makes specific references to Florida, the lessons learned have national implications involving a multitude of natural disasters.

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- Employment and Labor Law, May 8-10, 2019
- Retail and Hospitality, May 8-10, 2019
- Cannabis Law, May 15, 2019
- Drug and Medical Device Litigation, May 16-17, 2019
- Insurance Bad Faith and Extra Contractual Liability Seminar, June 5-7, 2019

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

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Quote of the Week

“Effective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one nation, indivisible, is to be realized.”

—Former Justice Sandra Day O’Connor (b. Mar. 26, 1930), *Grutter v. Bollinger*, 539 U.S. 306, 332 (2003).

This Week's Feature

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Every state (as well as the federal government) has detailed rules and regulations regarding emergency preparedness. However, nothing could have prepared the operators of Florida's nursing homes and assisted living facilities for the fury of Hurricane Irma in September of 2017. Multiple unexpected and costly lessons have been learned in the aftermath of this historic storm, with resultant litigation brought by the plaintiffs' bar to cash in on the natural disaster. While this article makes specific references to Florida, the lessons learned have national implications involving a multitude of natural disasters.

Create Your Emergency Preparedness Plan

Operators of nursing homes and assisted living facilities must carefully create emergency preparedness plans that contemplate both natural and man-made disasters (i.e., hurricanes, tornadoes, earthquakes, fires). The Centers for Medicare & Medicaid Services (CMS) and the various states have specific rules and regulations that provide guidance regarding an emergency preparedness plan (EPP). While assisted living facilities may not be governed by the CMS, such facilities must be cognizant of state rules. Based on your jurisdiction, be sure to have your EPP approved by whatever governmental authority is mandated. In addition, it is good practice to review your EPP regularly to determine if any modifications are warranted.

Educate Your Residents and Their Families Regarding Your Emergency Preparedness Plan

Avoiding litigation starts with communicating with your residents and their families. Starting with the initial tour of a facility and with the admissions process, it is never too early to educate regarding your EPP. Residents and family members should be thoroughly informed regarding your EPP, and you should document the education with corresponding signatures to keep on file. It is recommended that periodic follow-up education should be contemplated. Further, if modifications or amendments to your EPP are implemented, the above procedures for education should also take place. Ignorance of your EPP should never be a

viable plaintiff claim, and proper documentation of education about your EPP will bolster your defense.

Conduct Emergency Preparedness Drills

The CMS and state-based regulators require periodic emergency preparedness drills on at least an annual basis. Be sure to understand such requirements and abide by them. Again, it is important to document drills that are conducted, and consider videotaping them (with the proper consent from your residents). Also, educating your residents and families regarding the need for, and the timing of, such drills is important.

Prepare for an Impending Natural Disaster

While being able to respond properly to unexpected disasters cannot be overemphasized, it is crucial to prepare diligently for forecasted disasters (e.g., hurricanes). With the benefit of modern weather forecasting, senior living communities are able to prepare better when a natural disaster occurs. Communicating with residents and their families as a storm approaches is important, and of course, documenting the communication is recommended. Work in collaboration with the medical director and residents and families to go over your EPP and potential contingencies. The goal is to reduce the risks of any "surprise" scenarios. It will never be possible to anticipate all surprises, but operators should nevertheless have thoughtful discussions regarding potential issues that could develop.

Prepare for the Unexpected Natural Disaster

With global climate changes, we can continue to expect the unexpected. Disasters, such as earthquakes, tornadoes, flash floods, and fires, are presenting much more frequently on a national basis. It is these unexpected natural disasters that emphasize the importance of an EPP and your staff's readiness to act without warning. When an unexpected natural disaster occurs, prepared senior living communities will rely on their EPP as well as the emergency drills and education of residents and families.

Collaborate with Third-Party Health-Care Providers

All residents of senior living communities have primary care physicians and their extenders. It is recommended that operators and their medical directors collaborate with third-party health-care providers regarding their EPP. In addition, there will be residents with hospice nurses and private-pay nurses and aides. These medical professionals will become additional eyes and ears of a facility in monitoring and assessing residents during a natural disaster.

Making Prudent Decisions in the Moment and Documenting the Good Care Provided

Know that your facility and caregivers will be scrutinized and judged by the actions taken during a natural disaster and in the aftermath. It is easy to be the Monday morning quarterback and criticize decisions that are made during the stress of a disaster. It is important to support your caregivers and recognize the tremendous stress that they will endure while providing care during a natural disaster. It is prudent to be extra diligent in documenting the care that is provided, keeping in mind that late entries will be the subject of unwarranted criticism by an uninformed media, the general public, and state officials in political protection mode.

Shelter in Place Versus Evacuation

If your facility is ordered to evacuate by the proper authorities, then, certainly, you should comply with the order. If you are not ordered to evacuate, then you must decide whether to shelter in place or evacuate. The general consensus in the senior living community is that sheltering in place is the safest option for most residents. The University of South Florida (USF) conducted a study in 2017 of nursing home residents who endured Hurricanes Katrina, Rita, Ike, and Gustav in 2004 and 2008 in Texas and Louisiana. Overall, the USF study concluded that due to the natural disasters, an extra 277 deaths occurred and 872 hospitalizations occurred during the storms (regardless of whether the studied nursing homes evacuated or sheltered in place). The study also concluded that those residents who were evacuated had substantial risks of increased death or hospitalization up to 90 days after the evacuation. See generally Daylina Miller, *Study: Evacuating Nursing Home Patients Before a Storm Not Always Safest Option*, WUSF Public Media (Oct. 12, 2017).

The term “transfer trauma” was coined in the early 1960s. See *generally* C. Knight Aldrich & Ethel Mendkoff,

Relocation of the Aged and Disabled: A Mortality Study, 11 J. Am. Geriatrics Soc’y 185 (1963). In that study, the authors concluded that “the death rate within one year of transfer to be 32%, with a substantial percentage occurring in the first three months after transfer.” *Id.* at 187. The bottom line is that residents of nursing homes and assisted living facilities are fragile and ill with multiple co-morbidities. A substantial percentage of residents suffer from varying degrees of dementia and take multiple medications. Structure and routine are important to sustaining residents’ quality of life. An evacuation of a facility causes enormous stress for the evacuees, and it is also stressful for the nurses and aides who are assisting with the evacuation. As such, the evacuation of a facility should only occur as a last resort.

Resultant Litigation (Despite the Best of Planning and Care)

Despite having an approved EPP and providing good care, bad outcomes are inevitable in natural disasters (whether sheltering in place or evacuating). A significant number of cases have been filed in Florida that contain allegations of storm-related negligence. New lawsuits continue to be filed. The claims range from violation of resident rights regarding nourishment and hydration to death.

Consequent Changes in the Law, Rules, and Regulations

In Florida, the governor directed the state’s regulatory agency to promulgate an emergency rule that mandated that every nursing home and assisted living facility in Florida have a working generator within 60 days with enough fuel capacity for 96 hours and with the capability of maintaining air temperatures between 71 and 81 degrees. That rule was challenged by nursing home and assisted living trade associations, and it was struck down (as no emergency existed at the time of the promulgation of the rule). The Florida Legislature in the 2018 session enacted a law that required all nursing homes and assisted living facilities to have working generators in place by January of 2019, with differing fuel capacities based on the size of the particular facility. No known rules address the regulation of humidity levels.

Also, being vigilant regarding appropriate ventilation of generators is a must. Interestingly, a bill was presented that would mandate that utility companies have to prioritize nursing homes and assisted living facilities for power restoration. However, that bill died in committee, reportedly

due to pressure from the utility lobby. Hundreds of facilities in Florida lost power after Hurricane Irma for multiple days. Multiple stories were told of non-health-care-related properties having their power restored before nursing homes and assisted living facilities. Laws that prioritize the restoration of power for senior living communities should be enacted in every jurisdiction.

Finally, the CMS established a new emergency preparedness rule as of November of 2017 that required nursing homes to have generators. See *generally* 42 C.F.R. § 483.73. The CMS rule also requires emergency preparedness plans that must be updated annually and include conducting at least annual drills. The CMS rule mandates that nursing homes must identify persons at-risk, which, of course, could include virtually all nursing home residents.

Conclusion

No matter how prepared a facility may think that it is and no matter how many emergency drills have been successfully completed, Mother Nature can humble us all with her damage and destruction. Of course, every senior living facility should be diligent in its compliance with local, state, and federal regulations with regard to emergency preparedness (including emergency drills); however, it is critical to note that the unexpected will most assuredly occur. Do not expect to rely on your government to provide assistance when disaster strikes. Be prepared to be self-reliant. Be prepared to shelter in place while still having a viable evacuation plan. Due to the risks of transfer trauma to elderly residents, while evacuation is an option, it is an option with associated risks, as evidenced by the information discussed above and other studies.

In addition, collaborating with third-party health-care providers (i.e., treating physicians, physicians' assistants,

nurse practitioners, hospice nurses, paramedics) is recommended, and the decision to implement any evacuation should include resident health-care providers who direct the care of the patients who reside in the facilities. If emergency power to a facility fails in any way, focused efforts should be made to maintain a comfortable environment and to continue care in that environment if possible. While temperature of such facilities is the subject of federal regulation and many state regulations and rules, the effect of humidity on individual residents is unknown and variable depending on each resident's specific, and usually many, medical conditions.

During a natural disaster, care of residents is certainly first and foremost. Documentation, from a practical and ethical standpoint, should be secondary. However, in the aftermath of a disaster, doing the right thing and focusing in real time on resident well-being and care, and documenting that care after the crisis has passed, with recognized and appropriate late entries, will be the subject of criticism and accusations. Expect to be judged (after the fact) for your decision making by families and residents, your regulatory agency and other political officials, the media, the public, social media, law enforcement, other health-care providers, and of course, by the plaintiffs' bar.

[Kirsten K. Ullman](#) is the founder and managing partner of Ullman Bursa Law in Tampa, Florida. Ms. Ullman is a 1990 honors graduate of Stetson University College of Law and has defended nursing homes and assisted living facilities for over 25 years. She has successfully tried and arbitrated senior living cases in multiple states and has served as national counsel for major insurance carriers in high-exposure long-term care claims. Ms. Ullman is a member of the DRI Medical Liability and Health Care Law Committee.

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.

Joseph P. DiPino



On January 4, 2014, Barbara Wilke drove her car south bound on Southwest Highway, proceeding on a green light. Phil Johnson, a self-employed truck driver, headed east on the intersecting street. His brakes failed as he tried to slow for his red light. Mr. Johnson’s truck broadsided Ms. Wilke’s car on the passenger side. She claimed aggravation of her preexisting fibromyalgia and neck injuries leading to a cervical fusion. She filed suit against Mr. Johnson and adduced medical evidence showing approximately \$671,000 in medical bills and an inability to work after her physicians put her on Social Security disability.

After obtaining all the medical records and deposing eight of her physicians, DRI member [Joseph DiPino](#), of **Beverly & Pause**, Chicago, engaged Dr. Martin Lanoff to review the medical records and deposition testimony. The defense contended that the plaintiff’s cervical fusion was unrelated to the accident with Mr. Johnson, her fibromyalgia was in fact not aggravated by the accident, and her injury was solely a neck strain. The plaintiff demanded Mr. Johnson’s \$2 million in coverage. The defense offered \$50,000. The parties agreed to submit the case to a binding arbitration before Judge Michael Panter of ADR Systems Inc.

After a lengthy arbitration in which all parties and medical witnesses testified, counsel for Ms. Wilke asked for \$3.1 million dollars. The defense disputed the causal relationship of the injuries to the accident and urged an award of \$40,000. After several days of deliberation, Judge Panter returned an award of \$125,000.

Kile Turner



[Kile Turner](#), of **Norman Wood Kendrick & Turner** in Birmingham, Alabama, and a DRI member, recently obtained a defense verdict

for his client, Pinnacle Design/Build Group, LLC, in a lawsuit filed by a homeowner claiming that the mechanized stabilized earth (MSE) retaining wall built by his client had failed. The lawsuit was tried in Shelby County, Alabama, where the plaintiff’s home is located. Mr. Turner’s client was an out-of-state construction company. About three months after the wall was completed in 2011, the slope above the wall began to fail, causing varying degrees of damage to the wall. The homeowner had experienced two significant mudslides before the construction of the wall, which was supposed to be a complete repair job.

At trial, the plaintiff presented an engineering expert who criticized various aspects of the design of the wall. An additional expert opined that significant grading work was required to fix the slope, which should have been done by Mr. Turner’s client. An aggressive cross-examination nearly got the expert’s testimony stricken, but the judge ultimately decided to let it go to the jury. Inconsistencies in some of the engineering drawings were blamed for the slope being steeper than contracted for, which resulted in the failure.

Mr. Turner countered with his own expert and leader in the construction of MSE walls, who explained why the wall was properly constructed. One of the keys to winning the case was the consistency of the defense witnesses, who were able to take a complicated geotechnical engineering problem and make a clear presentation to the jury.

The case had been in litigation for six years, but it took the jury less than 60 minutes to return a verdict for the defense.

Patrick Kasson



Reminger Co. LPA attorney and DRI member [Patrick Kasson](#), practicing from Columbus, Ohio, led a firm trial team that defended James Woods in a suit for defamation and invasion of privacy and successfully convinced the trial court to dismiss the case.

Mr. Woods is a noted conservative whose tweets are followed by many. At a Trump rally, a woman was photographed in what appeared to be a Nazi salute. Several sites on the internet and Twitter identified Patricia Boulger as the “Nazi salute lady.” Mr. Woods re-tweeted this information, asking his followers if Ms. Boulger, a Bernie Sanders’ supporter, was the “Nazi salute lady.” When Mr. Woods learned that Ms. Boulger was not that person, he tweeted

And The Defense Wins

that she was not. Ms. Boulger filed suit against Mr. Woods for defamation and invasion of privacy.

The Sixth Circuit Court of Appeals, in its most comprehensive decision on the legal standard for social media defamation claims, upheld the trial court's decision. The court of appeals correctly reasoned that Mr. Woods' tweet was constitutionally protected speech because it could clearly be read as a question, not a statement of fact. The case name was [Portia A. Boulger v. James H. Woods](#).

Mr. Kasson serves as the chair of the Reminger Governmental/Public Entity Liability Practice Group and is a

leader in the Employment Practices Defense and Directors and Officers Liability Practice Groups. He is also a member of the firm's Management Committee. He handles litigation involving labor and employment, wage and hour, housing discrimination, professional liability, governmental liability, construction defect litigation, and general tort liability. Mr. Kasson is a member of various professional associations and is a frequent speaker at both the local and national level in the areas of employment law, tort defense, and trial techniques.

Pathway to Partnership: Unlock the Mystery Behind Partnership

Pathway to Partnership



DRI's **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.

Sessions include:

- How Do I Become a Partner? Different Roads, Same Destination

- 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!

2019 Law Student Diversity Scholarship—*Deadline Extended*

DRI announces its annual Law Student Diversity Scholarship Program, open to rising (2019–20) second- and third-year African American, Hispanic, Asian, Native American, LGBT, and multi-racial students. All rising second- and third-year female law students are also eligible, regardless of race or ethnicity. Any other rising second- and third-year law students who come from backgrounds that would add to the cause of diversity, regardless of race or gender, are eligible to apply. Students who are members of the American Association for Justice (AAJ), law school or law student members of AAJ, or students otherwise affiliated with or employed by AAJ are not eligible for DRI Law Student Diversity Scholarships.

To qualify for this scholarship, a candidate must be a full-time student. Evening students also qualify for consideration if they have completed one-third or more of the total credit hours required for a degree by the applicant's

law school. The goal of these scholarships is to provide financial assistance to two worthy law students from ABA-accredited law schools to promote, in a tangible way, the DRI Diversity Statement of Principle. See the last page of the application for the DRI Diversity Statement.

Two scholarships in the amount of \$10,000 each will be awarded to applicants who best meet the following criteria:

- Demonstrated academic excellence
- Service to the profession
- Service to the community
- Service to the cause of diversity

Applications and all other requested materials must be received by April 8, 2019. Click [here](#) to access the 2019 Law Student Diversity Scholarship application.

DRI Cares

Regional Meeting Attendees Donate Books, Toys, and Games to La Paz Children’s Home

In an abundance of generosity, the SLDO and DRI leaders for the **Pacific Region** (Hawaii, California, Nevada, and Arizona) and **Northwest Region** (Oregon, Washington, Idaho, Alaska, Wyoming, and Montana) managed to find room for over 100 toys, books, and stuffed animals for the [Boys and](#)

[Girls Town of La Paz, Mexico](#). The receipt of these items was the shining highlight of the regional meeting. Where the average daily wage is \$5 U.S. per day, the gifts given by these regions were priceless. #DRICares thanks these leaders and the smiles they brought to the La Paz kids.



DRI Cares



Upcoming Seminars

Intellectual Property Litigation, May 8–10, 2019



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

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

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.

Retail and Hospitality, May 8–10, 2019



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. Discounted tickets to the parks may be available to purchase in advance for attendees, families, and friends. Please email RSVP@BakerDonelson.com no later than April 5, 2019, for details or to be included in the group purchase. We hope to see you in

Orlando! Click [here](#) to register.

Upcoming Seminars

Cannabis Law, May 15, 2019



The graphic features the DRI logo in the top left corner. The main title "Cannabis Law Seminar" is in a dark blue box. Below it, the date "May 15, 2019" and location "Washington, D.C." are listed. A photograph of cannabis leaves is on the left. At the bottom right, there is a "REGISTER TODAY" button.

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* Drug and Medical Device Litigation (May 16-17) and 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



The graphic features the DRI logo in the top left corner. The main title "Drug and Medical Device Litigation Seminar" is in a purple box. Below it, the date "May 16-17, 2019" and location "Washington, D.C." are listed. A photograph of a person in a lab coat is on the left. At the bottom right, there is a "REGISTER TODAY" button.

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* Drug and Medical Device Litigation (May 16-17) and 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!

Insurance Bad Faith and Extra Contractual Liability Seminar, June 5-7, 2019



The graphic features the DRI logo in the top left corner. The main title "Insurance Bad Faith and Extra-Contractual Liability" is in a green box. Below it, the date "June 5-7, 2019" and location "Washington, D.C." are listed. A photograph of an insurance claim form and a pen is on the left. At the bottom right, there is a "REGISTER TODAY" button.

Bad faith claims against insurance companies continue to evolve, with potentially devastating consequences. DRI's Insurance Bad Faith and Extra-Contractual Liability Seminar is the preeminent program for insurance executives, claims professionals, and outside counsel who specialize in bad faith insurance litigation. You will hear from some of the nation's leading bad faith defense lawyers, who have a long history of winning these difficult cases, as well as many of the in-house professionals who manage significant bad faith litigation and industry consultants who assist with these cases across the country, and beyond. This seminar can attract record numbers, so we invite you to register early. Then, come enjoy this exceptional CLE and networking opportunity and the sights and

sounds of Washington, D.C. Click [here](#) to view the brochure and to register!

Upcoming Webinars

Hot Topics in Public Utility Litigation, March 28, 2019, 12:00pm–1:00pm



This webinar will explore some of the most pressing litigation issues facing public utilities today. Attendees will hear from seasoned litigators regarding the trespassing/attractive nuisance and post-OSHA toxic tort cases that public utilities are currently facing. The discussion will include how these cases are evolving, key discovery and strategic considerations public utilities and their outside counsel must make, and best practices for managing these types of risk. Further, you will hear directly from in-house litigators at public utilities on how they view litigation risk and costs and how their outside counsel can become better partners with public utilities to control costs and manage risk. Click [here](#) to register.

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



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, 12:00pm–1:30pm



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

Idaho



State Membership Chair

Joshua S. Evett, Shareholder, Elam & Burke

Areas of Practice: General civil litigation with an emphasis on accounting and legal malpractice.

DRI member since 2012.

Josh's experience with DRI: "I was introduced to DRI by one of my partners, John J. Burke, and have always found the annual meeting to be fun and informative. The Museum of Science and Industry was excellent in Chicago, as was the presentation by John Dean. Most impressive."

Fun Fact: "I love cycling and playing the piano less-than-well."



State Representative

Julian E. Gabiola, Partner, Hawley Troxell

Areas of Practice: Medical malpractice, physician licensing, and other health care law issues with physicians and hospitals; professional malpractice; insurance defense; employment; and commercial litigation.

DRI member since 2008.

New Member Spotlight

James L. Johnsen, Crenshaw Ware & Martin



James L. Johnsen is a litigation associate with **Crenshaw Ware & Martin** in Norfolk, Virginia. Originally from Arizona, he received his B.S. in foreign services from Georgetown University and his juris doctorate from George Washington University Law School.

He focused his studies and extracurricular activities in law school on admiralty and maritime law and the federal

government's role and responsibilities in those areas. His areas of practice include admiralty and maritime law, business disputes, government contracts, litigation, employment law, and subrogation. He is admitted to the Supreme Court of Virginia, the U.S. Court of Appeals for the Fourth Circuit, and the U.S. District Courts for the Eastern and Western Districts of Virginia.

Quote of the Week

“Effective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one nation, indivisible, is to be realized.”

—Former Justice Sandra Day O'Connor (b. Mar. 26, 1930), *Grutter v. Bollinger*, 539 U.S. 306, 332 (2003).