The Voice of the Defense Bar

Raising the Bar

The newsletter of the Young Lawyers Committee

5/18/2019 Volume 15, Issue 5

Looking for Targeted Contacts?

Hit the Bullseye with dri

Contact Laurie Mokry at lmokry@dri.org or 312.698.6259

Committee Leadership

Chair
Baxter Drennon
Wright Lindsey & Jennings LLP
Little Rock, AR

Vice Chair
Shannon M. Nessier
Hanson Bridgett LLP
San Francisco, CA

Second Vice Chair
Stephanie M. Wurdock
Sturgill Turner Barker & Moloney
Lexington, KY

Editors

Taryn W. Harper
Greenberg Traurig LLP
Atlanta, GA

Anna Tombs
Cassels Brock & Blackwell LLP
Toronto, ON

Click here to view entire Leadership

laurel road

DRI Members get a .25% rate discount on student loan refi.

See Your Rates

Subject to eligibility

Member FDIC

In This Issue

Featured Articles

Retaining the Right Expert Witness with DRI's Expert Witness Resources 2

Hey Y'all! Howdy! How to Make the Most of Networking at the DRI Young Lawyers Seminar 3

Articles of Note

Air & Liquid Systems v. DeVries: The "Silver Lining" for Product Manufacturers 5

Witness Preparation: Finding Comfort in the Uncomfortable 7

Leadership Note—The Chair's Corner

Clarity Among the Trees: Getting Back to Basics with Your Clients 8

DRI Young Lawyers Member Spotlight

Kelly Ferrell 10

Membership Minute

Spring Recruitment Update 11

Timeout for Wellness

I'm Tired. Are Energy Drinks Worth It? 11

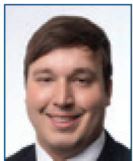
News & Announcements

And the Defense Wins! 13

Have Good News to Share? 13

Retaining the Right Expert Witness with DRI's Expert Witness Resources

By Trey Oliver



A new matter comes in. You analyze the facts alleged in the complaint, create a proof chart, and determine the discovery needed to prove or defend against the elements of the claims. That's the easy part.

Invariably, the case becomes more complicated, and many times, we, as attorneys, quickly find that we need help on a particular subject matter to prove or defend our case. That's where an expert witness comes in. And, as we know, a good expert witness can make a case just as easily as a bad expert witness can break a case.

Whether you are fortunate enough to identify early on that you need an expert witness, or whether it becomes evident that an expert witness is needed as discovery unfolds, expert witnesses with the right qualifications can be hard to find. Some cases require the retention of an expert witness within a particular niche; other times, even in a subject area where you have significant experience, your first choice may be conflicted out or request a higher rate than your client is willing to pay.

When this occurs, we are often left seeking a qualified expert witness. The tried and true methods of finding an expert witness in a time of need (*i.e.*, firm-wide e-mails, calls to long-lost law school comrades, and Google searches) are never a sure thing. Luckily, all hope is not lost—DRI has the resources to provide the help you need.

DRI maintains a database called "Expert Witness Resources" that provides options, profiles, and reports for potential expert witnesses. The database includes expert witnesses from all over the country and with specificity in numerous different fields. These expert witnesses have not only been identified by fellow DRI attorneys, but are recommended by your legal peers who have had significant case or trial experience with these expert witnesses.

The Expert Witness Resources database is divided into three subcategories: the Expert Resource Database, Expert Witness Reports, and Expert Witness Placement. When attempting to make an initial assessment, the Expert Resource Database and Expert Witness Reports resources are pertinent to retaining the right expert witness for your case.

The Expert Resource Database is one of the leading repositories of expert witness information on the market. With over 65,000 registered expert witnesses, it provides access to a vast network of expert witness contact information and the initial information you need to identify a list of potential expert witnesses in your geographic footprint and/or topic areas. A simple search through DRI's Expert Resource Database can cut out significant research or nonbillable time vetting potential expert witnesses.

If you aren't sure that you've found or identified the perfect expert witness through your initial search in the Expert Witness Database, DRI provides access to several types of expert witness reports with more detailed information on expert witnesses, ranging from brief screenings to in-depth reports. These reports include the DRI Expert Witness Profiler, the DRI Witness Screening Report, and the DRI Witness Challenge Report.

The DRI Expert Witness Profiler provides a comprehensive personal and professional background of an opposing expert witness or even your own expert witness. Expert witness profiling provides immediate strategic advantages and protects you from negligent retention claims. The Expert Witness Profiler includes information on an expert witness' general background, retention history by plaintiff and defense attorneys, expert rates, and case history (including direct and indirect challenges regarding the expert witness).

DRI also offers Expert Witness Screening Reports. These reports include a snapshot of the expert witness' testimonial history and an assessment of the number of times an expert witness has testified in the past. Within the Expert Witness Screening Report, you can also see the number of affidavits and reports a potential expert witness has published, the transcripts and depositions an expert witness is on record for, and the number of Daubert challenges (and exclusions) for that particular expert witness.

Lastly, the Expert Challenge Study provides an in-depth assessment of the expert witness' prior history of being

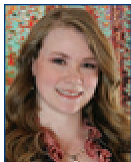
challenged, excluded, and critiqued as a result of his or her qualifications. These reports contain case summaries and supporting documents for each of the cases in which the expert witness has testified. Knowing whether your expert witness' testimony is going to be allowed is necessary on the front end to save you wasted time, effort, and expense that can dramatically affect your case.

In summary, DRI is a network that can help create client relationships, promote relationships with other professionals in your subject area, and keep you apprised on legal developments. But it also offers other benefits—including tools to help you identify and hire the right expert to advance your client's case. Next time you're in need of an expert recommendation, give DRI's Expert Witness Resources a try before sending off another firm-wide email.

Thomas "Trey" L. Oliver III is an attorney at Bradley Arant Boult Cummings LLP, handling matters in complex commercial, product liability, construction, real estate, and toxic tort litigation. He also serves as co-chair of the Expert Witness Committee for the DRI Young Lawyers group. Trey can be reached at toliver@bradley.com.

Hey Y'all! Howdy! How to Make the Most of Networking at the DRI Young Lawyers Seminar

By Shelley Napolitano



Registration for the 2019 DRI Young Lawyers Seminar is open! We want you to join us in Music City from June 26–28, 2019, at the Hilton Nashville Downtown. One of the greatest benefits of a DRI membership is access to the vast network of other attorneys and in-house counsel from the U.S. and Canada. Here's the inside scoop on the best ways to make connections and take advantage of every networking opportunity! We can't wait to meet you!

Service Project at Thistle Farms: Wednesday, June 26 at 10:00 AM

Join other service-oriented young lawyers on a trip to Thistle Farms, an organization that brings hope and opportunity to survivors of trafficking, prostitution, and addiction. The service project is my personal favorite way to network at the Young Lawyers Seminar while giving back to a great cause. This is the first event in the seminar line up and your first opportunity to make friends. Be sure to arrange your travel plans for an early arrival. We will head to Thistle Farms early on Wednesday. See you there!

Practice-Specific CLE: Wednesday, June 26 at 3:00 PM

The Practice-Specific Session is a brand new event this year. Not only will you get to attend a CLE presentation in your practice area, but you will have an opportunity to network with others who have a similar practice! Use this opportunity to find out what's going on in your area in other states and maybe make a new business connection.

Networking Receptions: Wednesday, June 26 at 6:00 PM & Thursday, June 27 at 5:30 PM

Before everyone heads out to dinner, we will get together for a welcome cocktail hour at the hotel. This is the perfect place to introduce yourself to new people. The Young Lawyers Committee is such a warm, welcoming group. You will have no trouble finding a new friend over drinks! Bring your business cards, and make a lasting connection.

Dine Arounds: Wednesday, June 26 at 7:30 PM & Thursday, June 27 at 7:00 PM

The Nashville foodie scene has some great offerings. Join other attendees on Wednesday and Thursday for dinner at the hottest spots around. Don't know anyone? No problem! Dine Around sign-ups will be circulated to seminar registrants as the seminar gets closer. These dinners are a blast! Great memories are made over a nice meal. Register for the Seminar today so you don't miss the announcement.

After Hours: Wednesday, June 26 & Thursday, June 27 After Dinner

The fun doesn't stop after dinner. When the dine arounds end, everyone will meet up at some of Nashville's most jamming spots! I bet some world-famous Nashville karaoke singing is in our future!

First Time Attendee Breakfast: Thursday, June 27 at 7:00 AM

Get up bright and early for an energizing breakfast for new attendees. Meet other first-timers and hear all about the Young Lawyers Committee from Committee Chair Baxter Drennon. When breakfast is over, you can head straight to the seminar programming with your new friends.

Fast Pitch: Thursday, June 27 at 1:00 PM

Fast Pitch is the Young Lawyers Seminar's exclusive session with access to in-house counsel. If you are interested, apply for a slot during Fast Pitch when you sign up for the seminar. You will have an opportunity to sit down one-on-one with in house counsel to pitch your business and receive tailored advice on how to improve. Do not miss this!

Brewery Tour: Friday, June 28 at 2:00 PM

Once the programming concludes, put on your boots and have a honky tonk of a time touring some local Nashville Breweries on Friday afternoon. Enjoy a cold beer and challenge your new friends to some competitive yard games, then relax with some mouth-watering Nashville barbeque as we wrap up a great seminar! Don't forget to register for this fun event.

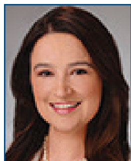
As we get closer to June, be on the lookout for Happy Hours in your state to meet some other attendees in advance of the Seminar. It'll be a great time! See you in Nashville!

Shelley Napolitano is a senior associate in the New Orleans office of Maron Marvel Bradley Anderson & Tardy. Shelley is a member of the firm's Product Liability and Mass Toxic Tort litigation team, focusing in the areas of talc and asbestos. She currently serves as the Vice Chair of the DRI Publications Board, as well as the DRI Young Lawyers Marketing Vice Chair. Shelley can be contacted at snapolitano@maronmarvel.com.

Back to Contents

Air & Liquid Systems v. DeVries: The "Silver Lining" for Product Manufacturers

By Danielle R. Luisi



Should a company that sells smartphone cases have to warn about the risk of exposure to cell phone radiation? Should a car maker have to warn about the risks of improperly stored anti-freeze? Should a manufacturer of flashlights have to warn about the risks associated with leaking batteries? Should a seller of hot dog buns have to warn about the health risks of consuming processed meat?

The United States Supreme Court recently ruled that a product manufacturer has a duty to warn when its product requires incorporation of a part that it knows (or should have known) is likely to make the integrated product dangerous for its intended uses. While at first glance, the Court's ruling in *Air & Liquid Systems v. DeVries*, No. 17-1104, - S. Ct. - , 2019 WL 1245520 (Mar. 19, 2019), expands a product manufacturer's duty to warn, there is a "silver lining." The Court's holding was expressly limited to maritime cases, leaving the aforementioned questions unanswered and allowing courts across the nation the freedom to use other approaches in general tort cases.

Background

In *DeVries*, the defendant manufacturers produced metal equipment such as pumps, blowers, and turbines, which were sold to the U.S. Navy for use on naval ships. Although the equipment utilized asbestos insulation or asbestos parts, the manufacturers did not always incorporate the asbestos into their products; rather, the equipment was often delivered in a condition known as "bare metal." In those situations, the Navy later added asbestos to the equipment. Plaintiffs, two Navy veterans, Kenneth McAfee and John DeVries, alleged that their exposure to asbestos on naval ships between the 1950s and 1980s caused them to develop lung cancer. Their families sued the manufacturers of the equipment, claiming they negligently failed to warn of the dangers of asbestos in the integrated products.

The manufacturers removed the cases to federal court and moved for summary judgment on the ground that they should not be liable for harms caused by later-added third-party parts, which is known as the "bare metal defense." The U.S. District Court agreed and granted the manufacturers' motions for summary judgment. However, the Third Circuit Court of Appeals vacated and remanded the case, holding that "a manufacturer of a bare-metal product may be held liable for a plaintiff's injuries suffered from later-added asbestos-containing materials" if the manufacturer could foresee that the product would be used with the later-added asbestos-containing materials. Recognizing the disagreement among the lower federal and state courts on how to apply the general tort-law "duty to warn" principle in cases involving integrated products, the Supreme Court granted *certiorari*.

Circuit Court Split

The Supreme Court's 6–3 majority opinion authored by Justice Brett Kavanagh began by discussing the three different approaches that had emerged in the federal and state courts on how to apply the "duty to warn" principle when the manufacturer's product requires later incorporation of a dangerous part. The first approach was the plaintiff-friendly foreseeability rule adopted by the Third Circuit. *See In re Asbestos Prods. Liability Litigation*, 873 F.3d 232, 241 (3d Cir. 2017). The second approach was the defendant-friendly bare metal defense adopted by the Sixth Circuit. *See Lindstrom v. A-C Products Liability Trust*, 424 F.3d 488 (6th Cir. 2005). The third approach fell somewhere between the other two, finding that foreseeability that the product may be used with another product or part that is likely to be dangerous is not enough to trigger a duty to warn, but a manufacturer does have a duty to warn when its product requires incorporation of a part and the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses. *See Quirin v. Lorillard Tobacco Co.*, 17 F. Supp. 3d 760 (N.D. Ill. 2014); *In re New York City Asbestos Litig.*, 27 N.Y. 3d 765, 59 N. E. 3d 458 (2016); *May v. Air & Liquid Sys. Corp.*, 446 Md. 1, 129 A. 3d 984 (2015).

The Holding

The Court agreed with defendant product manufacturers that the rule of mere foreseeability is too broad. Requiring product manufacturers to imagine and warn about all

possible uses of their products and parts would impose a costly burden on manufacturers, while also over-warning users. However, the Court also agreed with the plaintiffs that the bare metal defense in the maritime tort context goes too far in asserting that product manufacturers generally have no duty to control the conduct of a third person. Therefore, the Court concluded that, in the maritime tort context, a product manufacturer has a duty to warn when (i) its product requires incorporation of a part; (ii) the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses; and (iii) the manufacturer has no reason to believe that the product's users will realize that danger.

In reaching its decision, the Court found that product manufacturers are in a better position than the parts manufacturer to warn of the dangers from the integrated product, since they are typically more aware of the nature and risks of the integrated product. The Court also dispelled product manufacturers' concerns over cost and over-warnings, finding that any cost would be insignificant and any concern over uncertainty and excessive warnings was not substantial given that the Court's new three-part standard applies only in narrow circumstances involving maritime law. The Court explained, "[r]equiring product manufacturers to warn when their products require incorporation of a part that makes the integrated product dangerous for its intended uses is especially appropriate in the context of maritime law, which has always recognized a 'special solicitude for the welfare' of sailors. *See American Export Lines, Inc. v. Alvez*, 446 U. S. 274, 285 (1980)."

The Dissent

The dissent, authored by Justice Neil Gorsuch, argued in favor of the traditional common-law approach, that a supplier of a product generally must warn only about those risks associated with the product itself, not those associated with the products and systems into which it later may be integrated. The dissent explained that, as a matter of policy, product manufacturers are in the best position to understand and warn users about the risks of their products and internalize the full cost of any injuries. However, if the Court now requires warnings for other people's products, then the incentive for manufacturers to warn is diluted. Plus, the warnings themselves may become long, duplicative, and conflicting, thus causing potential confusion and disregard among consumers. To illustrate, the dissent provided the following scenarios: "[a] home chef who buys a butcher's knife may expect to read warnings about the dangers of knives but not about the dangers of undercooked meat," and, similarly, "a purchaser of gasoline may expect to see warnings at the pump about its flammability but not about the dangers of recklessly driving a car." The dissent also argued that the majority's new three-part test would bring about uncertainties in its application as courts would now be faced with determining what qualifies as "incorporation" or as an "integrated product." Despite these concerns, the dissent refers to a "silver lining," that nothing in the majority's opinion compels courts operating outside of the maritime context to apply the newly fashioned test. Thus, the dissent suggests that courts outside of maritime law are free to use the "more sensible and historically proven common law rule."

The "Silver Lining" for Product Manufacturers

Based on the Court's ruling in *DeVries*, product manufacturers may fear expanding liability and future litigation. However, there is a "silver living." Indeed, the Court's holding was expressly limited to maritime cases. For general tort cases outside of maritime law, courts are not compelled to follow the Court's newly established three-part test. Therefore, absent a maritime case, these questions over a product manufacturer's "duty to warn" are yet to be resolved in state and federal courts.

Danielle R. Luisi is an attorney with the law firm Husch Blackwell, LLP in Chicago, Illinois, where her practice focuses on the defense of toxic tort and asbestos litigation. As a trial attorney, she has successfully defended insurers and companies serving as part of national and local trial counsel teams. She is a member of the DRI Young Lawyers Committee and the DRI Toxic Torts and Environmental Law Committee. Ms. Luisi can be reached at Danielle.Luisi@huschblackwell.com

Witness Preparation: Finding Comfort in the Uncomfortable

By Nicholas A. Rauch

In preparation for depositions, attorneys may overlook a truly important part of the proceeding: the witness. While the attorney may focus on the legal arguments, potential evidence, and important details that accompany the deposition itself, they may forget that preparing the witness is an essential aspect of success. They may also forget that lawsuits are, generally, a cause of stress and anxiety for their clients and witnesses. Importantly, along with witness preparation comes addressing these worries, fears, and anxieties that a client or witness may have about testifying. Although the size and complexity of the case may dictate the amount of time necessary for witness preparation, witnesses are commonly anxious, stressed, or fearful about being subjected to questioning by an adverse attorney. Most deponents have never been deposed before, and some are fearful of their ability to answer questions effectively. Eliminating and addressing their anxieties prior to the deposition significantly aids successful preparation.

Many witnesses lack confidence in discussing the lawsuit with their own attorney, much less an adverse attorney during a deposition. To build their confidence, there are simple preparation techniques that can be used to ease the common anxieties and fears that a witness or client may have about answering questions in a deposition. One of the goals for witness preparation is for the witness to be as comfortable as possible while testifying. Regardless of case type or value, addressing their fears and anxieties prior to the deposition is beneficial to their preparation. The following techniques are based on the short hypothetical below:

Bruce was involved in a two-car accident in 2016. He was driving a pick-up truck when a small SUV in front of him slammed on its brakes in rush-hour traffic. Bruce was unable to slow down to avoid the collision. Plaintiff suffered extensive back-end damage to her vehicle and is claiming lumbar, cervical, and thoracic spinal injuries. Bruce has never been involved in a civil lawsuit, but has two previous DUI convictions from 2009 and 2013. Bruce's deposition is scheduled soon, and he is nervous about testifying. Bruce worries that his prior convictions may be asked about in questioning and is not confident in his recollection of the accident.

1. Describe the Basics of a Deposition

A majority of witnesses have never been involved in a civil lawsuit or been subjected to questioning by an adverse attorney. To them, being subjected to questioning, especially in a room full of attorneys, may seem scary and uncomfortable. When asking witnesses their biggest concern prior to their deposition, a majority are anxious because they do not know what to expect. The fear of the unknown may worry witnesses, as the pressures of the lawsuit may already overwhelm them. In preparation, the attorney should explain the procedural basics of a deposition with the witness. Define for them the type of setting, who will be present, where the deposition will take place, and how long it will last. Explain how a normal deposition is conducted, who will be asking the questions, and what to expect as a witness. Additionally, explain your role, as their attorney, in the deposition, and what you will be doing. While attorneys may be familiar with what to expect, witnesses are often not. In deposition preparation, jumping into the content of the questions and answers, without addressing the basics of a deposition, may not comfort a witness who has never participated in this type of legal procedure.

Bruce's attorney should explain the basics of a deposition. This includes what a deposition is, how the deposition will proceed, who will ask questions, who will be present for questioning, how evidence may be submitted, and how long this deposition will last. Bruce's attorney should also explain what she knows about the other attorney, how she will defend questioning, and her basic rules for answering questions. It is also important to remind Bruce about the importance of the deposition and that his answers are under oath. Before Bruce appears for his deposition, he should be familiar with the basics of the deposition and should understand how it will proceed.

2. Discuss and Address Damaging Facts Up Front

Witnesses are often worried because they believe their testimony will present damaging or unfavorable facts relative to the lawsuit. They may also be worried that previous lawsuits, criminal convictions, or disciplinary actions may hinder their credibility. The witness may be hesitant to discuss these facts with the attorney in preparation for the deposition. First, the attorney must communicate to the witness that these facts are, generally, discoverable during a deposition. The witness must know that most information, unless subject to privilege, may be asked about. Additionally, the witness must know that

discussing the facts during preparation is much easier than trying to explain them during a deposition. Knowing that this information is discoverable, the attorney and witness should also discuss these facts in detail so that the witness is comfortable talking about them. Discussing or explaining these facts may not be easy for some witnesses, as they may feel embarrassed. However, the attorney should attempt to find a level of comfort with the witness to address these concerns. Truly, the attorney must "find comfort in the uncomfortable."

Bruce's attorney must discuss the details of each DUI conviction prior to the deposition. She must reaffirm with Bruce that her reasons for asking about his criminal record are not for embarrassment, but because they will be open for questioning during the proceeding. Bruce's attorney must also discuss with Bruce any other previous criminal convictions or potential damaging facts that he has not already disclosed to her. Additionally, Bruce's attorney should confirm Bruce's recollection of the accident. Here, Bruce's attorney should focus on any damaging facts, unknown witnesses, or any undisclosed facts prior to the deposition.

3. Reaffirm Their Previous Testimony or Recollection

The facts concerning a lawsuit may take place years before the lawsuit is litigated. A witness may be worried about testifying under oath and whether they will misstate what actually happened. Additionally, witnesses are often worried because they may not remember or know all the facts that lead to the lawsuit. This lack of confidence can be overcome by readdressing and reaffirming their recollection of the facts and scope of knowledge. If the witness has repeatedly thought through their testimony, and discussed it confidently with their attorney, they will feel more comfortable answering questions in this regard. The attorney must reaffirm their recollection of the facts, their knowledge about other witnesses, and their involvement with the lawsuit. This dialogue aims to provide the witness with confidence and avoids attempts by the questioning attorney to confuse the witness and admit facts outside their personal knowledge.

Bruce must be comfortable and confident with discussing the accident. His attorney should find time to speak with Bruce prior to the deposition so that they may discuss the details of the accident and address any concerns he may have. As the accident occurred in 2016, it is reasonable for Bruce not to have a detailed recollection. Bruce needs to know that he has a right to say that he does not recall and does not know certain facts.

Nick Rauch is an attorney at Lind, Jensen, Sullivan, & Peterson in Minneapolis, Minnesota, where he focuses his practice on transportation law, professional liability, personal injury, and wrongful death. Nick also currently serves on the Steering Committee for DRI Litigation Skills. Nick can be reached at nicholas.rauch@lindjensen.com.

Leadership Note—The Chair's Corner

Clarity Among the Trees: Getting Back to Basics with Your Clients

By Shannon M. Nessier

This past week, I was lucky enough to have my work take me into the beautiful forests of the Yosemite Valley and to the even grander mountains of Yosemite National Park. It's rare that my work takes me some place so spectacular; usually, it is dingy conference rooms in hotel work centers and out-of-the-way courthouses with hometown lawyers glaring at me. This trip was only for thirty hours, and having now returned to the office with renewed vigor, I can say those were thirty of the best hours I have spent on work in a while. But, I didn't feel that way heading into the trip, if I am being honest.

Months ago, an association I work with on a regular basis invited me and a colleague to its annual meeting. We are doing no work for them now, and not sure when the next work will be needed. But, this wouldn't have been a working meeting anyway. No one would be talking about the law, at least not the law I practice, and likely no one in the room would be pumped to be talking to a lawyer, even though we are often *their* lawyers. Instead, for the association, this was its flagship meeting to get its members together—to build community, to provide education, and to undertake future planning. Given our long history together, they thought we might enjoy being a part of

the experience. I was honored to be asked to join, and so excited when I was able to find the spot in my schedule. Of course, I said yes as soon as I knew I could fit it in, without giving in much thought beyond that—time with clients is always a YES!

But, as the weeks zoomed by, and the meeting approached, I started to feel the stress of being out of the office build. The drive alone would be five hours each way! That's ten out-of-pocket hours just for the drive—eeeeek, thought my brain. Then, I had cases suddenly start getting hot, ones that I could have sworn when I agreed to attend would not get active until summer or even fall. My anxiety continued to mount. What if case W needs me to manage the client, what if case X needs me on conference calls all day, what if case Y's settlement implodes? Each day closer I got to going, I was growing more nervous. My work anxiety was talking me out of the excitement I had felt when I was first asked to attend, when I had gleefully accepted.

As we wound the narrow roads into the Sierra and Yosemite valleys, and my phone flashed at me—NO SERVICE—slowly, my anxiety about work began to fade, and I began to feel the calm of my surroundings taking over. Each new set of hills, winding row of trees upon trees, and snow-capped brook brought me closer and closer to feeling that I was exactly where I was supposed to be. By the time we arrived at the meeting, I still hadn't figured out my goals for the next thirty hours, but I felt at ease and ready to enjoy the experience. The calm I felt wash over me as the beauty of Yosemite helped me feel purposeful was nothing compared to how invigorated I was as soon as I sat down to dinner that night at a table full of the members whom I have the privilege of serving as their counsel.

The dinner was simple but elegant. And, they had put together tributes to departed members, thank yous to retiring staff, and a talk on cutting-edge issues. I was reminded with each activity the impact this association has on the lives of the men and women who make it up; it's not just some entity off across the world, it is each family that gets up every morning at sunrise to make sure Americans have the best agricultural products in the world.

As we enjoyed dinner, I got to chat with so many different people: association and client officers, individual members and their spouses, government agency representatives, and leading agricultural scholars. We talked about real issues facing the industry, from tariffs and climate change, to immigration and automation. These weren't academic discussions, but real impacts on real people, and they made more sense than any academic debate ever could.

The next morning, as I joined the members at the day's sessions, I was so excited to see how forward-thinking the industry is. The panels were about creative management, government regulations and lobbying, and the future of the industry. It was exciting to hear what they are doing and where they are going, and, more imputably, to make sure they had the chance to tell me what they needed to, so I can serve them better. The new issues they discussed started instantly making me wonder about overlapping areas of concern, about ways to mitigate risk, and tools I could give them to make their lives easier.

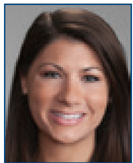
Suddenly, my brain was firing on all cylinders. I was jumping from one issue to the next, thinking of all the ways that we could make sure these families and their farms had every shot at succeeding, and making sure their risk was minimized. It was exhilarating to sit around and discuss plans, to help them find better ways to do things, and to know that they were as excited about their future as ever. When it was finally time to head out, I gave lots of hugs, cracked a few more jokes, but gave out not a single business card. Instead, I had spent thirty hours just listening to them and building real connections. I left with such a better understanding of what they needed to thrive, and was pumped to get myself back to the office and find ways to make it happen for them.

As we drove back out of the beautiful Yosemite Valley, my mind felt the same ease and calm it had when we'd driven, only now, because I had surrendered to this experience and not buried myself in work, I was awakened to so many new opportunities to be of real help to my client and their contacts. I am so grateful that I was able to attend, grateful to my team at work that gave me the freedom to attend without the world crumbling, and grateful to the people at the meeting for inspiring me to be better for them. I cannot imagine how much I would have missed out on if I had missed this amazing event because of "work stuff." Don't make that mistake!

Shannon M. Nessier is an experienced litigator at Hanson Bridgett LLP in San Francisco, who focuses on the defense of product manufacturers, suppliers, and retailers as well as premises owners in personal injury and defective product/premises litigation. In addition, she provides advice and litigation defense on product and food labeling claims, Organic labeling issues under COPA, and Proposition 65 claims. She is an active member of DRI and the Young Lawyers Committee, chairing the YL substantive liaison and annual meeting committees before becoming vice chair of the committee.

DRI Young Lawyers Member Spotlight

Kelly Ferrell



How and why did you first get involved with DRI?

A mentor encouraged me to get involved with DRI years ago. I've thoroughly enjoyed not only meeting phenomenal lawyers throughout the country, but also attending the professional development programs that are relevant to being a young lawyer and my practice area.

What DRI committees (other than Young Lawyers) are you most interested in, and why?

As an employment law attorney, I'm most interested in the Employment and Labor Law substantive law committee. In fact, this May I will be attending the Employment and Labor Law Seminar for the first time, and I'm excited for that experience from both an educational and networking perspective.

What is your favorite part about being a lawyer?

My favorite part about being a lawyer is that it requires constant learning. To do our job right, we have to become overnight experts on our client's business operations and industry nuances, the facts and legal arguments of each new case, and changes and developments in the law. I love that every day is different and brings new challenges. It's never boring!

When you are not practicing law, what do you enjoy doing?

I soak up every free minute I have with my husband, Lou, and our two-year-old daughter, McKinley. We love traveling together, especially to Breckenridge, Colorado. On the weekends, we are often found at McKinley's two favorite places—the zoo and neighborhood park.

What has been your biggest success in your legal career thus far?

The biggest accomplishments of my legal career thus far are defeating a Fair Labor Standards Act class certification and winning a case-dispositive motion for summary judgment in an Age Discrimination in Employment Act case.

What is most important piece of advice you have been given related to practicing law?

Be responsive, but also take time to think it through—and that these two things are not mutually exclusive. There's no getting around it; we are in the customer service industry, and our clients need to know that we're on top of whatever they send our way. Communication is key. Respond quickly, and keep your clients updated at each step along the way. But also, don't be afraid to take a step back and "sleep on it" before providing a recommendation or conclusion.

What is the greatest sporting event you've ever been to?

The 2006 Rose Bowl National Championship game, watching Vince Young lead the Longhorns in their victory over USC. Hook 'em!

What was your very first job?

I was a hostess at an Italian restaurant while in high school. I don't think I could have ever been a waitress because of the whole balancing dishes on a tray requirement.

If someone is visiting your city, where is it essential that they go to eat?

It's not a trip to Houston without grabbing some good Tex-Mex and barbeque. For Tex-Mex, I recommend the Original Ninfa's on Navigation (there are other Ninfa's locations, but skip those—this one is the real deal). For barbeque, my favorite is Corkscrew BBQ.

Kelly Ferrell is an associate at Porter Hedges LLP in Houston, Texas where she represents clients in commercial litigation matters, with a focus on employment litigation and consulting. Kelly's practice includes representing clients in matters involving the Fair Labor Standards Act, the Family Medical Leave Act, Title VII, misappropriation of trade secrets, wage disputes, executive compensation agreements, and non-compete agreements. Kelly can be reached at KFerrell@porterhedges.com.

Membership Minute

Spring Recruitment Update

By Alie Van Deman

The DRI Young Lawyers Membership Subcommittee thanks everyone for their efforts in recruiting new members during our first recruitment push of 2019. So far, Young Lawyer members have recruited 10 new members, and we have recruited 19 percent of our overall goal of 53 new members for the year. As promised, one lucky Young Lawyer has been rewarded for their recruitment efforts; Emily Ruzic is now the steward of the recruitment trophy.

With the Young Lawyers Seminar coming up, we would like to introduce our next recruitment push, which will run from April 1 through June 15. The final event of the seminar is a brewery tour. The young lawyer who recruits the most new members to DRI between April 1 and June 15 will receive a free brewery tour (or the cash value if the winner is unable to attend the event). This is a really great prize for a really fun event, so make sure you get credit for as many new members as possible. We get credit for recruits even if they are not young lawyers if they list a young lawyer's name in the "referred by" and "Young Lawyers" in the recruiting committee section.

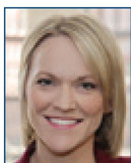
During this recruitment push, make sure to remind young lawyer recruits (admitted to the bar for 5 years or less) that when they join DRI they will receive credit for one free seminar. This credit can be used at the Young Lawyers Seminar in Nashville. What better way to kick off a DRI membership than by attending the Young Lawyers Seminar? If you are recruiting a member who is not a young lawyer, they will receive a $100 credit towards a CLE. These are great incentives for all new members! We don't want to miss out on any new members, and you don't want to miss the opportunity to attend the brewery tour for free, so let's make the most of our next recruitment push!

Alie Van Deman is an associate in the Houston office of Hartline Barger LLP. Her practice focuses on products liability and construction defense. She currently serves as the Co-Vice Chair of Membership for the Young Lawyers Committee.

Timeout for Wellness

I'm Tired. Are Energy Drinks Worth It?

By Samantha Woods



I'm going to go out on a limb here and guess that at some point every week, you either think to yourself or say out loud, "I'm tired." Of course you are! We all have busy lives, and I bet you're as guilty as I am about sacrificing your sleep to get one more billable hour out of a day or one more hour with family or friends. So, when that happens, what do you do? Personally, I reach for coffee, and for the most part, I don't feel bad about it. And, to be honest, I don't want to know of the ill-effects of coffee, so we're not exploring that question here. No, here, I want to talk about energy drinks.

Recently, my husband, myself, and our three-month old (it's his fault I'm so tired) were headed home from a weekend with family. My husband drives; I usually nap. On the way out of town, he stopped at a gas station and bought an energy drink. Before our son, I'd never seen him drink an energy drink. He's a health nut. He gets up at 4:30 AM and works out every day, he weighs his lunch for reasons I don't even understand, and he drinks the recommended amount of water. It's great. It's also a little annoying. So, the new addition of energy drinks to his life surprised me and, truthfully, gave me an excuse to give him a hard time about it. But, about half an hour into my rant about why he shouldn't drink energy drinks, it became pretty clear to both of us that I really don't know anything about energy drinks. I mean, they don't *seem* healthy, right? Well, they aren't, and here's the skinny:

Mostly, the risks associated with energy drinks related to their caffeine content. The high levels of caffeine in energy drinks can cause:

- caffeine overdose, which can lead to palpitations, high blood pressure, nausea and vomiting, convulsions, and in extreme cases even death;
- Type II Diabetes, as high consumption of caffeine reduces insulin sensitivity;
- problems in pregnancy, such as low birth weight, miscarriages, and still births;
- poor dental health; and
- dependence.

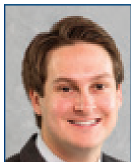
It is also common for energy drinks to contain other stimulants like guarana or vitamin compounds, the effects of which have not been studied. *Warnings Issued Over Energy Drinks*, NATIONAL HEALTH SERVICES, https://www.nhs.uk/news/food-and-diet/warnings-issued-over-energy-drinks/ (last visited Apr. 29, 2019).

Studies have shown, however, that energy drinks have more severe effects on the heart than coffee, even when the two contain the same amount of caffeine. *Energy Drinks Worse for Your Heart Than Caffeine Alone: Study*, NBC NEWS, https://www.nbcnews.com/health/health-news/energy-drinks-worse-your-heart-caffeine-alone-study-n751686 (last visited Apr. 29, 2019).

Hopefully, this information gives you the ammunition you need to convince your loved ones to opt for something other than an energy drink. Maybe a cup of coffee?

Samantha Woods practices at Martin Pringle Law Firm in Wichita, Kansas, focusing on civil and commercial litigation, including medical malpractice defense and products liability, as well as bankruptcy and creditor's rights. Samantha is Co-Vice Chair of the Wellness Subcommittee of the Young Lawyers Steering Committee and can be reached at smwoods@martinpringle.com.

And the Defense Wins!



Eric Grinnell of The Carr Law Office, LLC, in Hudson, Ohio, recently had a fantastic defense win in the case *Pipoly vs. Fontanez-Zenguiz* (CV-2017-12-5152) in the Summit County Court of Common Pleas in Ohio. The plaintiff in the case was traveling as a passenger in a vehicle insured by Allstate Insurance Company ("Allstate"). The Allstate policy that covered the vehicle had UM/UIM coverage. The plaintiff had his own policy through State Farm Mutual Automobile Insurance Company ("State Farm"), which also included UM/UIM coverage. The vehicle the plaintiff was traveling in was struck by an uninsured motorist. Plaintiff filed suit and made a negligence claim against the uninsured tortfeasor, an uninsured coverage claim against Allstate, and an uninsured coverage claim against State Farm. State Farm and Allstate disagreed over whose policy was primary. State Farm asserted a cross-claim against Allstate for declaratory judgment as to whose policy was primary. Both State Farm and Allstate then filed for summary judgment on State Farm's declaratory action.

The court ruled in favor of Allstate and held that the State Farm policy was primary. The court looked at the language in both policies and concluded that the plaintiff was an "additional insured" under the Allstate policy and that UM/UIM coverage was only owed to "additional insureds" if the UM/UIM coverage under the Allstate policy exceeded the limits for other similar coverage under any other policy. The UM/UIM limits were the same for both Allstate and State Farm, and thus, the plaintiff was not owed any UM/UIM coverage under the Allstate policy. Furthermore, the court rejected State Farm's arguments that the Allstate policy was primary based on other Ohio case law, as the case law that State Farm relied on involved policies with dissimilar language, and thus, were not applicable.

Have Good News to Share?

Have you or one of your fellow young lawyers recently received an honor, a promotion, or a defense win? Do you have any announcements for DRI Young Lawyers? Please contact the Editors, **Taryn Harper** (harpert@gtlaw.com), **Anna Tombs** (atombs@casselsbrock.com), **Natalie Baker Reis** (nbaker@mrchouston.com), and **Darin Williams** (dwilliams@lanermuchin.com), so we can share it in *Raising the Bar*!