



dri

The Voice of the
Defense Bar™

The Voice

May 22, 2019

Volume 18, Issue 20

[This Week's Feature](#)
[And The Defense Wins](#)

[DRI News](#)
[DRI Cares](#)

[Upcoming Seminars](#)
[Upcoming Webinars](#)
[State Membership Chair/State](#)
[Representative Spotlight](#)

[New Member Spotlight](#)
[Quote of the Week](#)

This Week's Feature



Past Medical Expenses: Admit or Exclude?

By Brendan Doherty

An interesting trend has emerged over the past several years in personal injury cases: plaintiffs are sometimes seeking to *exclude*, and defendants are seeking to *admit*, evidence of plaintiffs' past medical expenses in personal injury cases.

Article continues on page 4.



And The Defense Wins

- Keep The Defense Wins Coming!
- Sean Sullivan
- Scott Kyroutac

[MORE](#)

DRI Cares

- WDTL Throws Birthday Dream Party

[MORE](#)

Upcoming Webinars

- Collecting and Preserving ESI to Effectively Defend Motor Carriers and Drivers After Implementation of the ELD Mandate, June 7, 2019, 12:00 pm–1:00 pm CST
- Friction or Fiction: The Changing World of Slip-and-Fall Analysis, June 12, 2019, 12:00 pm–1:00 pm CST

[MORE](#)

DRI News

- Upcoming DRI Elections
- What Is the Pathway to Partnership Webinar Series?
- Exceptional CLE and Networking Amid Washington, D.C. Sights and Sounds—DRI Insurance Bad Faith and Extra-Contractual Liability Seminar
- New Episode of DRI's Podcast, "A Conversation with..."

[MORE](#)

Upcoming Seminars

- Insurance Bad Faith and Extra-Contractual Liability Seminar, June 5–7, 2019
- Trucking Law Primer, June 26, 2019
- Young Lawyers, June 26–28, 2019
- Appellate Advocacy, July 19, 2019
- Managing Partners and Law Firm Leaders Conference, September 5–6, 2019
- Strictly Automotive Seminar, September 12–13, 2019

[MORE](#)

- Perils, Pitfalls and Privilege Logs: Best Practices for Privilege Review, June 13, 2019, 12:00 pm–1:00 pm CST
- Preemption in Drug and Medical Device Cases: An Overview and Hot Topics, June 20, 2019, 12:00 pm–1:00 pm CST
- The Future Isn't Always Bright Planning for the Unexpected and the Expected, June 25, 2019, 1:00 pm–2:00 pm CST

Looking for
**Targeted
Contacts?**

**Hit the
Bullseye**
with **dri**™



Contact Laurie Mokry today at
lmokry@dri.org or at **312.698.6259**.

dri™

Diversity for Success
Seminar and Corporate Expo



June 19-21,
2019
New Orleans

REGISTER TODAY

State Membership Chair/State Representative Spotlight

- Maryland

Bryan D. Bolton, Funk & Bolton PA

Marisa A. Trasatti, Partner, Wilson Elser Moskowitz Edelman & Dicker LLP

[MORE](#)

New Member Spotlight

Chad W. Higgins, Bernstein Shur Sawyer & Nelson PA

[MORE](#)

Quote of the Week

“There is nothing more deceptive than an obvious fact.”

—Sir Arthur Conan Doyle ([b. May 22, 1859](#)), “[The Boscombe Valley Mystery](#),”
in *The Adventures of Sherlock Holmes*.

This Week's Feature

Past Medical Expenses: Admit or Exclude?

By Brendan Doherty



An interesting trend has emerged over the past several years in personal injury cases: plaintiffs are sometimes seeking to *exclude*, and defendants are seeking to *admit*, evidence of plaintiffs' past medical expenses in personal injury cases.

It appears, in many instances, that the purpose of this strategy is to avoid giving the trier of fact a benchmark to use in quantifying past and future general damages (e.g., pain and suffering) and future life-care expenses. The logic is apparently twofold. First, defense counsel and their clients are not alone in using the so-called "hard costs" as a benchmark when attempting to determine the value of a claim. As discussed in other articles, "it is commonly believed that jurors use the past medical expenses as a guide for awarding future medical expenses, and potentially as a basis for pain and suffering awards," and "[i]t is not unreasonable to assume that jurors may also look to the total amount of medical expenses involved in an incident to determine the severity of the plaintiff's injury." Andrew S. Bolin, *Amounts Billed vs. Amounts Paid Limiting the Presentation of Past Medical Expenses by Plaintiffs at Trial*, 30 Trial Advoc. Q., Winter 2011, at 24, 24. Waiving—and successfully excluding—these expenses outright puts the trier of fact in a position in which it simply has no data to consult in calculating future medical expenses and general damages.

Secondly, the plaintiff's waiver of these expenses avoids a disproportionate trial presentation. Using the example of a typical mild traumatic brain injury case, medical care in the past typically involved an emergency room visit and perhaps an ambulance ride, diagnostic studies, a neuropsychological evaluation, some medications, and periodic progress reports from a treating physician. In a run-of-the-mill case, these expenses often total less than \$50,000. On the other hand, the value of the mild traumatic brain injury (mTBI) case from the claimant's standpoint often lies in an inflated life-care plan and the intangible aspects of the case. In an mTBI case involving a seven- or eight-figure general damages request and a significant life-care plan, a juror may see smoke and mirrors if the past economic losses are exceptionally low in comparison.

The question for the defense then becomes, does one fight to keep the damages *in*, if it may benefit the case? Obviously, from a strategy standpoint the answer to this question will depend on multiple factors, but if it is determined that the case would benefit from the jury being made aware of the amount of the past medical expenses, the defense practitioner will likely have to convince the trial judge of the relevance of this evidence.

On that point, there are multiple authorities, although ironically, nearly all of the favorable authorities stem from rulings in favor of claimants. For example, in *Chapman v. Mazda Motor of America, Inc.*, the court held that although the plaintiff could not recover amounts disallowed and not paid by Medicaid, evidence of the total past medical bills was admissible to show the severity and extent of plaintiff's injuries. See 7 F. Supp. 2d 1123, 1124–25 (D. Mont. 1998). Similarly, in *Brice v. National Railroad Passenger Corp.*, although the amount of medical expenses paid through an insurance policy procured by the defendant was not recoverable, the court found that evidence of the bills and expenses for medical care was "relevant to the determination of the full extent and nature of plaintiff's injuries." 664 F. Supp. 220, 224 (D. Md. 1987). In *McGee v. River Region Medical Center*, the court found that amounts of past medical bills may be relevant and admissible because the amounts "can serve as an aid in [the jurors'] deliberations with respect to the seriousness and extent of the injuries complained of." 59 So. 3d 575, 581–82 (Miss. 2011). In another decision, *Luther v. Lander*, the plaintiff appealed the trial court's exclusion of medical expenses that had been paid by her insurer, claiming that it misled the jury into believing that her injuries were minor. See 373 P.3d 495, 500 (Alaska 2016). The Supreme Court of Alaska determined that the amount of medical expenses should have been admitted because "evidence of the amount of medical bills is relevant to the severity of a plaintiff's injuries." *Id.* at 502. See also *Barkley v. Wallace*, 595 S.E.2d 271, 273–74 (2004) (finding that past medical bills were relevant "because they tended to establish the probability of [the plaintiff's] claim that she experienced pain and suffering as a result of the accident," and therefore, they were admissible "to support non-monetary elements of her compensatory damages claim").

Obviously, the biggest hurdle may be convincing a trial judge that evidence relating to a claim that is not being asserted is relevant. This may be a difficult obstacle to overcome because, at the moment, and apparently solely a result of the hard work of plaintiffs' attorneys in earlier years, the weight of the authorities supports admissibility.

Conclusion

If the number of plaintiffs' attorneys citing the above-referenced decisions in trial pleadings—some of which appear to have little significance otherwise—is any predictor, it is likely that this issue will result in more litigation and decisions in the future. For now, it appears that in cases

in which defense counsel seek to admit past medical amounts, the best argument in favor of relevancy is that past medical expenses have some relevance to the seriousness of the injuries being claimed. It remains to be seen whether the courts will be receptive to these arguments when they are being asserted by the defendant but not the plaintiff.

[Brendan Doherty](#) practices in Texas and Louisiana with the law firm of **Gieger Laborde & Laperouse LLC**. He primarily practices in the areas of energy/oil and gas, product liability, aviation, and general casualty litigation. Mr. Doherty is a member of the DRI Litigation Skills 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.

Sean Sullivan



On April 8, 2019, the Appellate Court of Illinois, Second District, affirmed the defense judgment that [Sean Sullivan](#) of **Daley Mohan Groble PC**, in Chicago, achieved on behalf of his client BNSF Railway Company. The appellate court affirmed that the trial court properly found that the plaintiffs failed to prove that fuel from a train collision migrated onto their property. *Indian Creek Dev. Co. v. BNSF Ry. Co.*, 2019 IL App (2d) 180380-U.

In 2007, the plaintiffs sued BNSF Railway Company, seeking damages for injuries caused by a 1993 fuel spill from a train wreck on BNSF’s property that released up to 7,000 gallons of diesel fuel, which allegedly migrated onto the plaintiffs’ property and allegedly remains unremediated. After a 12-day bench trial, the trial court entered judgment in BNSF’s favor in April of 2018, accepting the defense’s forensic evidence and arguments and finding that the plaintiffs failed to carry the burden of proof pertaining to breach of duty, proximate cause, or damages.

Much of the trial focused on expert testimony concerning (1) geology, hydrogeology, and groundwater migration; (2) forensic geochemistry and petroleum “fingerprinting”; (3) environmental investigation techniques and standards; and (4) the reasonable remediation (if any) necessary for petroleum contamination discovered on the Indian Creek property. In almost every regard, the trial court found BNSF’s expert testimony more compelling and persuasive than the plaintiffs’ evidence.

A central trial issue was whether the petroleum contamination on Indian Creek’s property was diesel fuel or some other petroleum product associated with the property’s long history of industrial use. BNSF’s forensic chemistry expert testified that the Indian Creek contamination was almost entirely heavy fuel oil and gasoil unrelated to the locomotive accident. His conclusion was based on a

combination of gas chromatography and sophisticated analysis of the samples for genetic biomarkers and other molecular indicators. The court found BNSF’s forensic testimony “more reliable, compelling and persuasive” than Indian Creek’s evidence.

The court found that the petroleum contamination on the Indian Creek property was heavy fuel oil and gasoil, not diesel fuel, and that the contamination did not come from the train accident. Based on all the evidence, the trial court found that Indian Creek failed to carry its burden of proof on the claim that diesel fuel from the train accident contaminated its property and on the separate issue of damages.

The plaintiffs appealed the trial court’s judgment, arguing that the trial court’s finding that the plaintiffs failed to prove that fuel from the collision migrated onto the property was against the “manifest weight of the evidence.” In addition, the plaintiffs argued that the court erred in placing the burden on the plaintiffs to apportion liability and that the trial court erred in finding that the plaintiffs failed to prove that they were entitled to damages.

The appellate court affirmed the judgment of the Circuit Court of Kane County, holding that the “trial court properly found that plaintiffs failed [to] prove that fuel from a train collision migrated onto their property.” Thus, the court did not need to address the other two issues.

Scott Kyrouac



DRI member [Scott Kyrouac](#) of **Wilkinson Goeller Modesitt Wilkinson & Drummy LLP** in Terre Haute, Indiana, recently achieved a defense win on behalf of a client in *Brian Kent v. Samantha Brown*, Vermillion Circuit 83C01-

1701-CT-003. On Wednesday, November 16, 2016, an automobile crash occurred on Interstate 74 (I-74) about 1,650 feet west of mile marker 4 near the interchange with State Road 63 (SR-63). A freightliner driven by Kent was struck by a 2016 jeep driven by Brown. The semi had traveled down the 1,400-foot-long ramp from SR-63 to westbound I-74 and proceeded onto the 1,350-foot-long speed-change lane on westbound I-74, when the defendant lost control of her jeep. The defendant’s jeep entered the center median, came back to the right, and struck the right front of the semi in the westbound driving lane. The defendant’s jeep came to a final resting position 100 feet west of the semi. The truck-tractor came to rest on its right side on top of

And The Defense Wins

the guardrail. Part of the load came out through the trailer roof. In the rollover, the plaintiff sustained a broken left wrist; soft tissue injuries to his head, neck, and back; and a loss of consciousness of an unknown duration. The plaintiff lost his job because of a story in the local newspaper about the accident.

The plaintiff's counsel argued that Brown was at fault because she was traveling at an excess rate of speed, not paying attention, and lost control of her jeep. The plaintiff presented video evidence and expert testimony that the defendant had ample opportunity to see the semi and safely move over into the left-hand passing lane without losing control. The plaintiff suffered lost income and a future earnings deficit because he lost his job. Interrogatory answers estimated lost income to be as high as \$1.4 million.

Scott Kyrouac pointed out inconsistencies in the plaintiff's testimony and specific findings on the roadway. Kyrouac argued that Brown acted reasonably when the semi appeared to be merging into her lane. Kent was a

professional driver who didn't have a good reason why he didn't see the defendant and avoid the accident. The investigating police officer testified as a factual witness on what he was told and the physical markings on the roadway. The defense reconstructionist Gary Cooper was not able to find any reason why the plaintiff did not see the westbound jeep before the merging. Cooper's testimony was not substantially different from that of the plaintiff's expert; both experts were at a loss to explain why each of the drivers did not see each other sooner. The case is unique in that the plaintiff's counsel prevented the defendant from introducing any evidence of medical bills, charges, write-offs, or workers compensation payments. Offers of proof were tendered by defense counsel. Proximate causation was the main issue before the jury, which ultimately concluded on February 21, 2019, that there was no fault on the part of the defendant that caused the plaintiff's injuries and damages.

DRI News

Upcoming DRI Elections

Four **Director Elected Nationally** seats on the DRI Board of Directors, plus the offices of **Second Vice President** and **Secretary-Treasurer**, will be filled at the [2019 Annual Meeting in New Orleans](#), October 16–19. To be considered

for any position, a DRI member must first file a Declaration of Candidacy form. For more information, please contact **Nancy Parz** at DRI headquarters: nparz@dri.org or **312.698.6224**. **Declarations are due by July 1, 2019.**

What Is the Pathway to Partnership Webinar Series?

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!

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 indus-

try 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

DRI News

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. 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.

New Episode of DRI's Podcast, "A Conversation with..."

This week's "A Conversation with..." podcast features Amy Sherry Fischer. She currently serves as president-elect of the International Association of Defense Counsel and

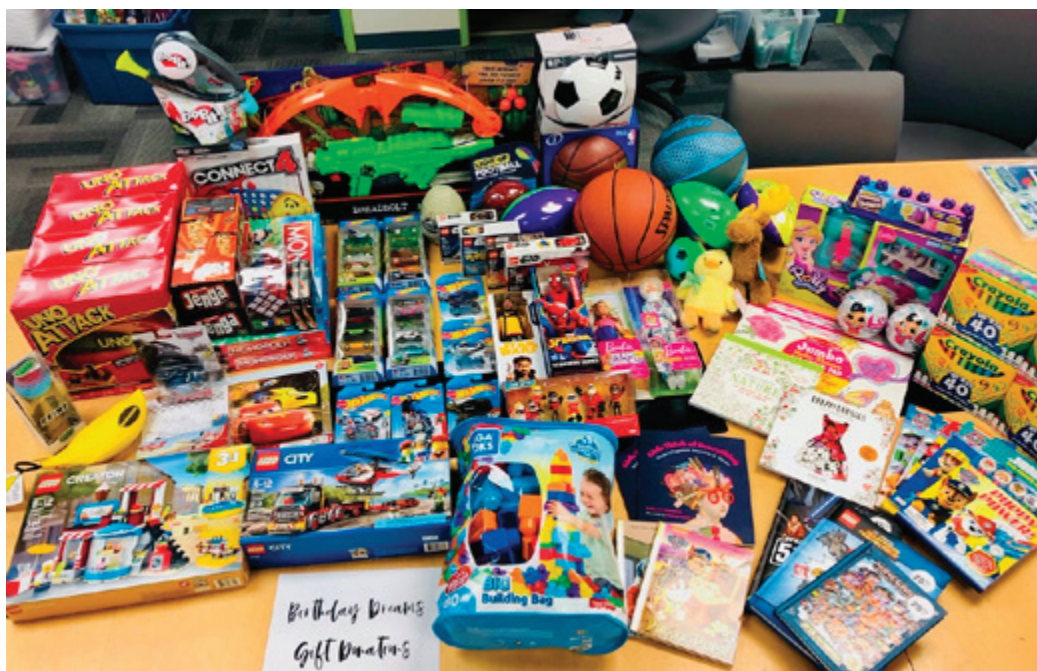
is on the DRI Board of Directors. [Click here](#) to listen to this episode.

DRI Cares

WDTL Throws Birthday Dream Party

The **Washington Defense Trial Lawyers** (WDTL) recently hosted a party for approximately 35 children through [Birthday Dreams](#), a non-profit organization serving the Puget Sound area and dedicated to bringing joy to homeless children with the gift of a birthday party. Nine WDTL volunteers participated in the party, which included a bounce house, arts and crafts, face painting, music, and many much-appreciated presents for the birthday kiddos. The volunteers also served up cupcakes, juice, and ice cream.

Overall, WDTL brought in a total of 87 gift donations, which is beyond awesome and [Birthday Dreams](#) was elated when everything was dropped off. Not only did WDTL fulfill all of the specific wish lists for their party, but their generosity will continue bringing joy to many more children at future parties. This event was a great success and WDTL looks forward to organizing additional opportunities to work with Birthday Dreams.



DRI Cares



Upcoming Seminars

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



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 for the program.

Trucking Law Primer, June 26, 2019



The DRI Trucking Law Committee is hosting a defense litigation primer on how to try a trucking case, designed for young lawyers and those new to the practice area. This dynamic presentation centers on a trucking trial, with interactive segments that will include instruction, demonstration, and feedback from attendees. Experienced attorneys will guide attendees through a common trucking accident fact pattern and demonstrate trial methods and techniques used for effective representation of a trucking client at trial. With the opportunity for participants to engage in breakouts and analysis, this is a primer not to be missed! [Click here](#) to view the brochure and to register for the program.

Young Lawyers, June 26-28, 2019



Welcome to Nashville, Music City and home to some of the best barbeque there is! This seminar is jam-packed with sessions to teach young lawyers practical skills while giving them ample opportunities to develop and grow meaningful, career-rocketing relationships. Join like-minded, enthusiastic young lawyers not only to develop critical skills, but also to create genuine friendships with top attorneys from around the country. Hear from engaging in-house and outside counsel alike on key issues such as voir dire techniques, making compelling opening statements and persuasive closing arguments, interfacing with the news media on behalf of your client, and more! [Click here](#) to view the brochure and to register for the program.

Upcoming Seminars

Appellate Advocacy, July 19, 2019

dri	Appellate Advocacy Seminar
	July 19, 2019 Chicago REGISTER TODAY

This program will benefit all attorneys interested in appellate practice. All appellate practitioners, including seasoned appellate advocates, attorneys looking to branch into or build an appellate practice, and young lawyers, will learn relevant and practical skills to apply to their daily work. Moderators will pose thought-provoking questions and hypotheticals to panels of distinguished judges, practitioners, and academics who will share their knowledge of appellate practice, business development, legal writing, records on appeal, appeals of injunctions, and judicial recusal. As a bonus, the committee is teaming up with the National Foundation for Judicial Excellence (NFJE) to provide two sessions of joint programming and a joint networking reception at the end of the

seminar. [Click here](#) to view the brochure and to register for the program.

Managing Partners and Law Firm Leaders Conference, September 5–6, 2019

dri	Managing Partners and Law Firm Leaders Conference
	September 5–6, 2019 Denver REGISTER TODAY

DRI proudly presents this unique program specifically for managing partners and future law firm leaders. The keynote address will be by Craig A. Thompson, a partner at Venable LLP, who has more than two decades of experience handling civil cases in federal and state courts. He represents clients in the areas of commercial litigation, product liability, premises liability, and personal injury. Mr. Thompson also is active in leading law firm inclusion and diversity initiatives, and served for five years as chair of Venable's Diversity Committee. He will share his unique insight about law firm leadership and the tools necessary to lead in today's challenging legal environment. Join us in the Mile High City for a high-value experience with those who most clearly understand your chal-

lenges and are, therefore, best able to provide you with solutions. [Click here](#) to view the brochure and to register for the program.

Strictly Automotive Seminar, September 12–13, 2019

dri	Strictly Automotive Seminar
	September 12–13, 2019 Columbus, OH REGISTER TODAY

Come join your colleagues and peers for two days of interactive learning at the DRI Strictly Automotive Seminar. Hear directly from the manufacturers on what is important right now in automotive litigation and what is on the horizon with the advancement of new technology. For the first time ever, participants will travel off-site to attend a live crash test and learn alongside experts as they show the latest ways to help defend your automotive cases. [Click here](#) to view the brochure and to register for the program.

Upcoming Webinars

Collecting and Preserving ESI to Effectively Defend Motor Carriers and Drivers After Implementation of the ELD Mandate, June 7, 2019, 12:00 pm–1:00 pm CST



During this “Lunch and Learn” webinar, attendees will hear from experienced lawyers and a senior claims specialist regarding the Federal Motor Carrier Safety Administration’s implementation of the ELD Mandate, the best policies and practices for ensuring that clients collect and preserve relevant and discoverable electronically stored information (ESI) in light of the new advancements in technology, and what ESI plaintiffs will be looking to obtain during discovery and how this information can be used to inflate the value of their claims. Attendees will take away practical tips that can be immediately implemented by their motor carrier clients and will be more knowledgeable regarding a plaintiff’s use of ESI and available technology to his or her advantage. [Click here](#) to register.

Friction or Fiction: The Changing World of Slip-and-Fall Analysis, June 12, 2019, 12:00 pm–1:00 pm CST



The past 10 years have brought significant advances in the field of reliable walkway slip analysis. At the same time, the inertia of decades of questionable analysis methods has not been overcome. Many “experts” still rely upon these questionable methods. This presentation, which features numerous case studies, takes an in-depth look at methodologies, research, standards, and practical applications of tri-bometer testing. A brief review of litigation considerations will be discussed as well. [Click here](#) to register.

Perils, Pitfalls and Privilege Logs: Best Practices for Privilege Review, June 13, 2019, 12:00 pm–1:00 pm CST



This program will discuss best practices for reviewing documents and electronically stored information for privilege. The topics covered will include the basic elements of the attorney–client privilege, work-product doctrine, and joint defense/common interest privilege; privilege pitfalls that often arise in document discovery and practices that in-house counsel can implement to limit their occurrence; the procedural and substantive requirements for privilege logs and how to deal with electronic mail chains and other problematic types of documents; and best practices to establish with outside counsel to efficiently and effectively identify privilege and minimize the possibility of waiver. [Click here](#) to register.

Preemption in Drug and Medical Device Cases: An Overview and Hot Topics, June 20, 2019, 12:00 pm–1:00 pm CST



Federal preemption is a key defense in drug and medical device product liability cases, and the FDA’s regulatory framework is the ever-present background factor for our clients and for litigation involving their products. This webinar will provide a brief introduction to federal preemption, aimed at newer lawyers, before shifting to a robust discussion of strategically raising preemption defenses, and it will conclude with a forecast of where federal preemption is headed, particularly given the impending changes to the FDA’s 510(k) clearance program. [Click here](#) to register.

The Future Isn’t Always Bright Planning for the Unexpected and the Expected, June 25, 2019, 1:00 pm–2:00 pm CST



This program will discuss minimize loss and maximize profit by employing best practices in planning for desired transition out of practice, as well as interruptions in practice such as natural disasters, medical emergencies, or death. [Click here](#) to register.

State Membership Chair/State Representative Spotlight

Maryland



State Membership Chair

Bryan D. Bolton, Funk & Bolton PA

Areas of Practice: Life, health and disability insurance and ERISA law.

DRI member since 1997.

Bryan's experience with DRI: "Over the past 20 years, DRI has provided me with a unique opportunity to make friends and connections around the country. I continue to learn from and lean on my DRI friends. I have also benefited personally and professionally from the many publishing and speaking opportunities offered by DRI."

Fun Fact: "I finally qualified for the Boston Marathon and look forward to Patriot's Day 2019!"



State Representative

Marisa A. Trasatti, Partner, Wilson Elser Moskowitz Edelman & Dicker LLP

Areas of Practice: General civil litigation, with an emphasis on product liability litigation, including cases involving drugs and medical devices. She also serves as outside General Counsel for Sciton, Inc., a prominent medical and dermatological laser company based in Palo Alto, California.

DRI member since 2001.

Marisa's experience with DRI: "DRI was one of the first professional organizations that I joined as a newbie lawyer, and I have been fortunate to meet a host of terrific lawyers over the past 20 years through attending meetings and seminars, chairing seminars (past DRI Women in the Law Seminar chair), and publication submissions for *For The Defense* and *In-House Defense Quarterly*. My DRI colleagues are definitely among the pool of lawyers who I draw upon for assistance in my general counsel role for Sciton, Inc. I would not trade the time invested in DRI and related activities for anything, and I look forward to 20 more years with the organization."

Fun Fact: "I learned early on to be persistent. Throughout college, I was a telemarketer, and my nickname was 'the Hammer.' While we had a script, it often took second and third efforting of folks to sell that magazine or convince the listener to try a credit card. That persistence has served me well in my legal profession, too, especially when witnesses hedge and plaintiffs' lawyers bob and weave in discovery."

New Member Spotlight

Chad W. Higgins, Bernstein Shur Sawyer & Nelson PA



Chad W. Higgins is a shareholder with **Bernstein Shur Sawyer & Nelson PA** in Portland, Maine.

With 15 years of pharmaceutical, products liability and toxic torts experience, Mr. Higgins has handled all areas of litigation and trials in both state and federal courts. During his tenure at two Am Law 100 firms, he served on the national counsel team for a defendant in the diet drug litigation, where he devised and implemented the discovery and pretrial strategy for multiple jurisdictions, including in the Northeast, Mid-Atlantic, and South, and was on multiple trial teams in both federal and state courts. Mr. Higgins also represented generic manufacturers in multidistrict litigation and consolidated state court proceedings.

Beyond representing companies, he has represented pharmaceutical sales representatives in government and internal investigations. In addition, Mr. Higgins has over

10 years of experience defending matters brought by sovereigns, including states, counties, and municipalities. His practice also includes defending higher education institutions, food, beverage, cosmetics, and consumer products companies in litigation and regulatory counseling before the FDA, FTC, and CPSC.

Mr. Higgins graduated from Colby College in 1997 and Georgetown University Law Center in 2003. He is admitted to practice in federal and state courts in Maine, Massachusetts, and the District of Columbia. He is a member of the American Bar Association, including the Section on Energy, Environment and Resources (SEER), and the Maine, Massachusetts, and District of Columbia Bar Associations.

Chad embraces life's day-to-day challenges and triumphs with his wife and three young, energetic and opinionated, yet wonderful, children. And he golfs, but not well.

Quote of the Week

"There is nothing more deceptive than an obvious fact."

—Sir Arthur Conan Doyle ([b. May 22, 1859](#)), "[The Boscombe Valley Mystery](#),"
in *The Adventures of Sherlock Holmes*.