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The Voice

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By Larry D. Mason and Brandon D. Zeller

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Quote of the Week

“Whether we and our politicians know it or not, Nature is party to all our deals and decisions, and she has more votes, a longer memory, and a sterner sense of justice than we do.”

—[Wendell Berry](#) (b. Aug. 5, 1934).

This Week's Feature

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The Natural Resources Defense Council (NRDC) and the state of Vermont challenged the U.S. Environmental Protection Agency's recently enacted mercury report-

ing rule, and they came away with a mixed bag. The challenge in *Natural Resources Defense Council, Inc., State of Vermont v. United States Environmental Protection Agency* came before the United States Court of Appeals for the Second Circuit. NRDC and Vermont argued that three exemptions in the mercury reporting rule were unlawful. The court agreed with the petitioners on one exemption, but it sided with EPA regarding two others.

The Toxic Substances Control Act (TSCA) directs EPA to promulgate rules requiring manufacturers and processors of chemical substances to maintain records of their use of chemicals and report that information to EPA. In 2016, Congress amended the TSCA by adding (among other things) a directive requiring EPA to publish an inventory of mercury supply, use, and trade in the country every three years, and a directive to manufacturers—including importers—of mercury or mercury-added products to report to EPA according to regulations that EPA would create. The statutory amendment instructed EPA to avoid duplicative reporting requirements, when possible, and to minimize the cost of compliance with the new reporting rules. EPA later promulgated the new reporting rules for mercury required by the 2016 amendment. Finding the reporting rules inadequate because of what they considered an overabundance of exemptions, the NRDC and Vermont challenged them.

NRDC and Vermont first challenged an exemption for entities that manufacture (but not import) assembled products that contain a component that is a mercury-added product, but who do not manufacture the mercury-added component. NRDC and Vermont first argued that the TSCA itself requires *all* manufacturers of mercury or mercury-added products to report and that the language unambiguously includes the exemption's beneficiaries. However, although the court conceded that the TSCA could be read that way, it noted that the interpretation of the mandatory TSCA provision that NRDC and Vermont pointed to had to be tempered by another mandatory TSCA provision that EPA exempt certain manufacturers

from unnecessary or duplicative reporting. The court concluded that the interplay of the two TSCA requirements created an ambiguity, which meant that the court needed only to determine whether EPA's exemption was based on a permissible construction of the statute. EPA argued that the exemption was reasonable because the manufacturers and importers of the mercury-added components were already required to report the mercury in the components, so a report by the manufacturer of a product incorporating the component would be duplicative. NRDC and Vermont argued that the extra report could provide additional or distinctive information. But the court sided with the EPA, stating that the exemption was at least reasonable under the statute, even if a more optimal reading of the statute might exist.

NRDC and Vermont also challenged an exemption for manufacturers and importers of large amounts of mercury and mercury compounds. The court rejected this challenge for similar reasons. Recognizing that an exemption for entities that deal with large amounts of mercury might seem counterintuitive, the court nonetheless agreed with EPA's reasoning: a different regulation (the chemical data reporting rule) already required reporting of similar information from the same entities. NRDC and Vermont argued that the two rules required reporting at different times and therefore did not overlap, but again, the court held that EPA's interpretation of the TSCA requirements was at least reasonable.

Finally, NRDC and Vermont challenged an exemption for "[a] person engaged only in the import of a product that contains a component that is a mercury-added product." Here, the court agreed with the petitioners. The trouble, from the court's view, was that if both the product and the mercury-added component were manufactured outside the United States, there would be no reporting of that mercury. This, the court said, failed to comply with the TSCA's directives. EPA argued that the TSCA required reporting only from those who *intentionally* use mercury in a manufacturing process, and the use of mercury in a component of an imported, assembled product was so remote that it could not be intentional. The court was unpersuaded. It held that someone who imports a product that the person knows has a mercury-added component

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was categorically intentional about the mercury use and was therefore subject to the TSCA reporting requirement. Thus, EPA could provide no reasoned explanation for the exemption, and the court vacated the exemption.

Chemical manufacturing and importing is a complex and technical industry, and collecting comprehensive information on the industry is a difficult but essential challenge for regulators. This decision should clarify some parts of the reporting process for all parties.

Larry D. Mason is a partner at **Goldberg Segalla LLP** based in Chicago and Manhattan, where he dedicates his practice to first-party and third-party coverage, reinsurance, and defense issues, including environmental and toxic torts, product liability, professional liability for clients in construction, environmental and related industries, complex commercial litigation, and assistance to underwriters regarding policy drafting and strategy. With deep experience in litigation involving pollution, asbestos, and

occupational-disease exclusions, what constitutes a suit, allocation of costs, and successor liability, Mr. Mason serves as chair of the Environmental and Mass Torts Coverage subgroup of the firm's Global Insurance Services practice. He is a member of the DRI Toxic Torts and Environmental Law Committee.

Brandon D. Zeller is an associate at **Goldberg Segalla LLP** based in Greensboro, North Carolina, where he focuses his practice on counseling and defending insurers in all areas of litigation, particularly in environmental, construction defect, and bad faith matters, and handles environmental litigation involving the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). He also has extensive experience handling environmental, liability, and coverage issues for clients in the oil and gas industry, as well as royalty disputes, downhole litigation, environmental claims regarding historical oil and gas operations, and offshore regulatory matters.

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COVID-19

Our New Lexicon

By Leo Lagomasino, DRI National Director

Zoom. Doomscrolling. Zoom bombing. Distance learning. Masking. Covidiot. Pandemic. Virtual seminars. Zoom hearings. Social distancing. Contact tracing. PPE. Anti-masker. Dr. Fauci. Isolation. Remdesevir. Virtual happy hours. Testing. Antibodies. WFH. High-risk. Zoom depositions. Virtual weddings. Self-quarantine. Quarantinis. Drive-by graduations. Super-spreader. Herd immunity. Air hugs. Zoom [fill in the blank].

Our new lexicon to reflect our new reality, our new normal. This sampling of words also allows us to appreciate the extent to which our lives have been radically altered in a relatively short amount of time. Six months ago, most of us would have probably read this list and found the words to be either random or novel, and certainly not descriptive of our lives. Today, the concepts and events these words reflect permeate virtually every aspect of our professional, social, personal, and interior lives. Our relationships, plans, goals, and dreams have been altered. So many have suffered great loss. So many live with profound grief, anxiety, and loneliness. And no one knows what the future holds.

Yet, despite it all, our profession has persevered and demonstrated not only dedication to its clients but to each other. We are fortunate to live in a time when technology has allowed us to work virtually from home and away from our staff and colleagues, allowing law firms big and small to transition seamlessly to “Work from Home” to ensure the health and safety of lawyers and staff without sacrificing quality of client representation. We have learned to use Zoom (a lot!), and may even have become comfortable with it, while at the same time creating efficiencies for our

clients that may survive the pandemic. (Indeed, it seems almost archaic and a lifetime ago that the norm was to drive to the courthouse and chat with our colleagues in the courthouse hallway while waiting for the bailiff to call our case.)

As a profession, we have also taken care of each other. Firms are holding virtual happy hours and other virtual events that allow us to check-in on each other. While nothing replaces face-to-face contact, or sitting at an actual bar, it has been reassuring and refreshing to “see” our friends and colleagues after days of working in our own isolation.

Within our DRI Community, we are also there for each other both formally and informally. The committee work has not stopped, nor has it become any less enthusiastic than in years past. On a personal level, like most of you, some of my dearest friends are from DRI. Our virtual happy hours have been a balm for some of us. We have met each other’s families and even pets while laughing and commiserating all at the same time. I actually hope this aspect of the new normal becomes part of our future normal.

In closing, as we take a moment to look up and around us, I think we, as members of our profession, our firms, and DRI, owe it to ourselves and each other to add the following words to our new lexicon:

Perseverance. Dedication. Resilience. Creativity. Caring. Friendship. Hope.

P.S., PLEASE SAVE LIVES AND WEAR YOUR MASKS!



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We Have a Responsibility Too

By Imoh E. Akpan



The murder of George Floyd and the protests that followed are seminal moments in our nation's history. I am truly amazed at the progress that this movement has made not only on systemic issues, like policing of Brown

and Black communities, but also forcing a national conversation on race. It was only three short years ago that Colin Kaepernick was "blackballed" by the NFL for taking a knee during the national anthem. Today, the NFL, NBA, NHL, and MLB have co-opted the symbolism of the "Black Lives Matter" movement and encouraged their players to take a knee and speak out about race and policing.

The question must be asked, Where are the similar upheaval and race consciousness in the legal profession?

The late John Lewis said, "You have to tell the whole truth, the good and the bad, maybe some things that are uncomfortable for some people." The uncomfortable and complete truth about the legal profession is that we, as a community, have failed to expand the legacy of those lawyers, like Thurgood Marshall, who fought to bring about change that desegregated schools and ensured protection for civil rights and voting rights. In 2001, Black/African Americans constituted less than 2 percent of all law firm partners (1.28 percent) and less than 5 percent of all law firm associates (4.37 percent). Two decades later, these percentages have barely changed. Black/African Americans constitute less than 2 percent of all law firm partners (now 1.97 percent) and less than 5 percent of all law firm associates (now 4.76 percent).

I do not pretend to think that corporate general counsel or law firm managing partners and executive committees will have a change of consciousness as swift as the NFL, NBA, NHL, or MLB. But we must ask ourselves, *What can we do as individual lawyers to bring about the change that is so desperately needed?*

Again, I borrow from the life of the late John Lewis. After graduating from high school, the 17-year-old wrote a letter to Martin Luther King Jr. asking for his help in

applying for admission to segregated Troy State University. To his surprise, Dr. King not only wrote back but sent him a bus ticket to meet him in Montgomery, Alabama. John Lewis said that meeting with Dr. King changed his life.

As DRI members and leaders in the legal defense industry, we can increase and improve the opportunities for lawyers from underrepresented backgrounds. Four years ago, I was a newly minted partner trying to figure out the unknown that is business development. I signed up for the planning committee for the DRI Diversity for Success Seminar and was invited to a fly-in meeting. My first DRI Diversity fly-in meeting changed my professional career. I met so many dynamic leaders, who were not only committed to the cause of diversity and inclusion but

"If we want to see change and more opportunities for lawyers from underrepresented backgrounds, we all have a role to play and a responsibility to pay forward the opportunities that were bestowed on us."

were committed to each other's professional development. During the meeting, Stacy Douglas gave me the opportunity to be the Dine-Around chair for the upcoming seminar. I also met soon-to-be DRI President Toyja Kelley, who I am proud to call my mentor and friend.

One contact, one invitation, one meeting can inspire and change a professional career. The kindness and graciousness of a few have opened doors and opportunities for me. If we want to see change and more opportunities for lawyers from underrepresented backgrounds, we all have a role to play and a responsibility to pay forward the opportunities that were bestowed on us.

So how do we bring about this change. Get involved. Become a mentor and a resource for a law student or young lawyer. There are many young and aspiring lawyers, especially from underrepresented backgrounds, looking for professional mentors. You can help them develop their professional networks. For the last four years, I have served as a co-chair of the annual gala for the University of Baltimore's Fannie Angelos Program for Academic Excellence. The program is designed to identify talented minority students, help them gain admittance to law school, support them through law school, and help them find jobs upon graduation. I also participate in the

University of Baltimore's Black Law Student Association's Interviewing and Networking Event. I continue to make myself available for questions and even lunch. Participating in these initiatives has not only been personally rewarding for me but also for the young law students and lawyers I have met.

Whatever you choose to do, be available and pay it forward.

[Imoh E. Akpan](#) is a native of Washington, D.C., and a graduate of the University of Baltimore School of Law. He is a principal in the Baltimore office of **Franklin & Prokopik PC**, where he represents clients in transportation and retail and hospitality matters, with a focus on negligent security and civil rights defense. He is a member of the DRI Diversity and Inclusion Committee and has served as the marketing and corporate expo chair of the DRI Diversity for Success Seminar and Corporate Expo.

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DRI News

DRI Announces Its 15th Annual Diversity Law Student Scholarship Competition

DRI announces its 15th annual **Law Student Diversity Scholarship Competition** in which two \$10,000 scholarships will be awarded. The program is open to students who will be in their second or third year of law school in the 2020–21 academic year. Eligible are African American, Hispanic, Asian, Native American, LGBT, and multi-racial students. Also eligible are female law students, regardless of race or ethnicity and law students who come from backgrounds that would add to the cause of diversity, regardless of race or gender.

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 and Inclusion Statement of Principle. Since its inception, the program has awarded \$300,000 in 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.

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

Click [here](#) to access the scholarship application and information or go to www.dri.org. **Applications must be received by DRI no later than August 31, 2020.**

DRIKids

Ava Brooks

Why is it important to help other people who are in need?

People might be struggling and sometimes helping others just a little can mean a lot to them and make a big difference in their lives.

If you could design a charity to help the world be a better place, what would it be?

I would create a Spoil Room at animal shelters where the public could donate toys and treats for dogs and cats. Then the public could volunteer to play with the dogs and cats, so they get plenty of attention and love. The public can also give them lots of treats.

What's the thing you are the most proud of that you have done to help other people?

I like to help my Mom when she needs help with chores around the house or yard work because she really appreciates it.

If animals could talk, what would your pet say to you?

I think my dog (Max) would tell me how much he loves me and that I am his favorite person.

If you could give one gift to every kid in the world, what would it be?

An iPhone 11.

What is your perfect meal?

Twelve-piece chicken nugget meal from Chick-fil-A with a large fries and large Dr. Pepper.

What do you want to be when you grow up?

A veterinarian with no spiders allowed.

What is the hardest thing about being a kid?

Not having the freedom to do what I want all the time.

What's a memory that makes you happy?

All the DRI Spring Board Meetings, especially the one in Barcelona because I had so much fun the one night at dinner when all the kids sat together at a table. We laughed so much when we were passing the porron around the table so we could each try drinking out of it without it touching our mouth. Then we watched the flamenco dancer show and danced afterwards too.

Ava (age 11) is the daughter of DRI Immediate Past President Toyja E. Kelley of Saul Ewing Arnstein & Lehr LLP in Baltimore and his wife, Caitlin.



FDCC FedSERVES Supports Schools in Underdeveloped Countries

The Federation of Defense and Corporate Counsel (FDCC) FedSERVES Committee, co-chaired by [Tiffany Alexander](#) and [Lynne Ingram](#), is excited to announce their first project! This will be the first of many opportunities for FDCC's generous and conscientious members to give back to their communities and help support those in need.

The FedSERVES Committee is collecting your **used cell phones, tablets, keyboards, computers, webcams, DVD drives, and other electronic devices** to be donated to the [World Computer Exchange](#), which uses donated electronics to build computer labs in primary schools and colleges in underdeveloped countries.

Please make sure your devices are wiped, the data and photos on the hard drives and phones are deleted and the donations are cleaned from anything you may have on it.



"Send us your tired, your poor, your old huddled devices yearning to breathe free again"

This will be an ongoing drive, so as you have new items to donate, please send them along. The FedSERVES Committee will continue to add to their list of organizations who can benefit from these items.

Do you have items to donate? All you have to do is mail or ship them to Lynne Ingram at the address below, and we'll take care of the rest.

Lynne Ingram
908 Steel Road
Havertown, PA 19083



Upcoming Webinars



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[Click here](#) for details.



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Human Health Risk Assessment, August 26, 2020, 12:00–1:00 pm CDT

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DRI Membership—Did You Know...

Build Business by Making Personal Connections

Sometimes you have to put down the phone and make a personal connection. Whether you are a solo practitioner just starting your career, a mid-level corporate attorney advancing in your career, or a senior attorney looking to develop a deeper bench, building a business is about building relationships.

DRI's renowned [seminars](#) and [substantive law committees](#) give you that opportunity to expand your practice, develop business referrals, and make lifelong friendships.

- Meet lawyers who are engaged in their careers and achieving their goals.

- Talk with and learn from leaders at the state and national level who are ready to share their knowledge and expertise with you.
- Raise your profile in the legal defense community by speaking at seminars, writing articles for DRI publications, and sharing your important achievements.
- Make personal connections.

In the end, as author Mike Jones has said, it's up to you: "If there is no wind, row. If you want it, make it happen."

New Member Spotlight

Ryan Class, Carlton Fields PA



[Ryan Class](#) is an associate in the Hartford, Connecticut, office of **Carlton Fields PA**. His practice focuses primarily on mass tort and product liability matters, particularly in cases involving pharmaceutical, medical device, and toxic tort litigation. Mr. Class also represents clients in construction litigation and related matters. He is currently admitted to practice in Connecticut and Massachusetts.

Mr. Class received his law degree from Boston University School of Law and completed his undergraduate education, as well as a master's degree in management,

at Wake Forest University. He joined Carlton Fields after a clerkship in the Connecticut Superior Court, and during law school, he was an extern at Boston University's Office of the General Counsel and an intern in the Securities and Exchange Commission's Division of Enforcement, among other positions. He also served as executive editor for the professional articles for the *Review of Banking & Financial Law* and had two articles published in that journal.

In his free time, he enjoys running, cooking, and (attempting to improve at) golf.

Quote of the Week

"Whether we and our politicians know it or not, Nature is party to all our deals and decisions, and she has more votes, a longer memory, and a sterner sense of justice than we do."

—[Wendell Berry](#) (b. Aug. 5, 1934).