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This Week's Feature



Beyond the Pleadings: Offering Extrinsic Evidence on Rule 12 Motions

By Cathy Trent-Vilim and Janae Hofer

Defense attorneys often file a motion to dismiss in lieu of an answer under Federal Rule of Civil Procedure 12(d). Depending on the grounds for the dismissal, we may even offer evidence in support of the motion, which often results in opposing counsel objecting and asserting that the admission of the evidence would convert the motion to dismiss to a motion for summary judgment. The trial court could then exclude the evidence. However, after months of discovery, the issue raised in the motion to dismiss likely ends up the subject of a motion for summary judgment, with the previously unadmitted evidence being received by the court.

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- Product Liability, February 6-8, 2019
- Toxic Torts and Environmental Law, March 14-15, 2019
- Medical Liability and Health Care Law, March 20-22, 2019
- Trial Skills and Damages, March 20-22, 2019
- Life, Health, Disability & ERISA, April 3-5, 2019
- Insurance Coverage and Claims Institute, April 3-5, 2019
- Construction Law Seminar, April 10-12, 2019

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Upcoming Webinars

- Welcome to the New Normal: Synthetic Drugs of Abuse, February 13, 2019, 12:00pm-1:00pm
- Counseling Drug and Medical Device Companies on Risk Prevention Strategies, March 6, 2019, 12:00pm-1:30pm
- Challenging Plaintiff's Use of Federal Regulations to Bolster Negligence Claims, March 13, 2019, 12:00pm-1:00pm

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- Arkansas

Joseph W. ("Joey") Price II, Member, Quattlebaum Grooms & Tull PLLC

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New Member Spotlight

Adrianna Hughes, Higgins Cavanagh & Cooney LLP

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Quote of the Week

"One kind word can warm three winter months."

—Japanese proverb.

This Week's Feature

Beyond the Pleadings: Offering Extrinsic Evidence on Rule 12 Motions

By Cathy Trent-Vilim and Janae Hofer



Defense attorneys often file a motion to dismiss in lieu of an answer under Federal Rule of Civil Procedure 12(d). Depending on the grounds for the dismissal, we

may even offer evidence in support of the motion, which often results in opposing counsel objecting and asserting that the admission of the evidence would convert the motion to dismiss to a motion for summary judgment. The trial court could then exclude the evidence. However, after months of discovery, the issue raised in the motion to dismiss likely ends up the subject of a motion for summary judgment, with the previously unadmitted evidence being received by the court.

Federal Rule of Civil Procedure 12(d) specifically states:

If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

Most practitioners focus on the language providing that “the motion must be treated as one for summary judgment.” *Id.* They gloss over the important language immediately preceding this: “matters *outside the pleading* are presented to and not excluded by the court.” *Id.* (emphasis added). The purpose of this article is to discuss the types of evidence that the federal courts have determined may appropriately be considered on a motion to dismiss without converting the motion to one for summary judgment.

Documents Submitted with the Complaint

Courts may consider documents attached to or submitted with a complaint when deciding motions to dismiss. *Humphrey v. Eureka Gardens Pub. Facility Bd.*, 891 F.3d 1079, 1081 (8th Cir. 2018); *In re MobileMedia Sec. Litig.*, 28 F. Supp. 2d 901 (D.N.J. 1998). This encompasses any exhibit that a plaintiff submits with his or her complaint, even when the exhibit contradicts the complaint. *Ganino v. Citizens Utilities Co.*, 56 F. Supp. 2d 222, 226 (D. Conn. 1999), *rev'd in part, vacated in part on other grounds*, 228 F.3d 154 (2d Cir. 2000).

Documents Incorporated by Reference in the Pleadings

Courts may also consider documents that are not attached to a complaint but incorporated by reference into the pleadings. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 323 (2007); *McChesney v. Fed. Election Comm'n*, 900 F.3d 578, 583 (8th Cir. 2018), *reh'g denied* (Oct. 30, 2018); *Lister v. Bank of Am., N.A.*, 790 F.3d 20, 22 n.2 (1st Cir. 2015); *Katyle v. Penn Nat. Gaming, Inc.*, 637 F.3d 462, 466 (4th Cir. 2011). When plaintiffs reference documents (or portions of the documents), courts may consider the entirety of the referenced documents when deciding motions to dismiss. *Havenick v. Network Exp., Inc.*, 981 F. Supp. 480, 509 (E.D. Mich. 1997). Most commonly, these documents include written contracts incorporated into a pleading.

Documents Relied Upon in Bringing Suits and Central to Claims

In addition to considering the pleadings, courts may also consider documents possessed by or known to a plaintiff and upon which the plaintiff relied in bringing suit: “when a complaint’s factual allegations are expressly linked to—and admittedly dependent upon—a document (the authenticity of which is not challenged), then the court can review it upon a motion to dismiss.” *Diva's Inc. v. City of Bangor*, 411 F.3d 30, 38 (1st Cir. 2005) (internal quotations omitted). In other words, even if a party fails to attach or reference a document, but the document is “integral” to the complaint, or it is “necessarily embraced” by the pleading, courts may consider the document. *Williams*, 845 F.3d at 903; *Chambers v. Time Warner, Inc.*, 282 F.3d 147 (2d Cir. 2002); *Berg v. Empire Blue Cross & Blue Shield*, 105 F. Supp. 2d 121, 126 (E.D.N.Y. 2000). Documents are “integral” or “central” to the complaints when plaintiffs are suing primarily upon the basis of documents. *Greenberg v. Life Ins. Co. of Virginia*, 177 F.3d 507, 514 (6th Cir. 1999).

Documents Possessed by Parties Opposing Motions to Dismiss

In deciding a motion to dismiss, some courts have also considered documents submitted by the moving party,

when the documents are in the possession of the party opposing the motion. *Kalyanaram v. Am. Ass'n of Univ. Professors at New York Inst. of Tech., Inc.*, 742 F.3d 42, 44 n. 1 (2d Cir. 2014).

Matters of Public Records and Subject to Judicial Notice

Even within the Rule 12(b)(6) framework, a court may also consider matters of public record and facts susceptible to judicial notice. Consideration of these matters generally requires no persuasion beyond attaching the record because authenticity is not generally an issue. *Tellabs, Inc.*, 551 U.S. at 322-23; *Funk v. Stryker Corp.*, 631 F.3d 777, 782 (5th Cir. 2011).

Evidence Supporting Certain Defenses

Sometimes a motion to dismiss is not based upon the sufficiency of a plaintiff's allegations but upon an alleged procedural defect in the suit. When the procedural defense would be dispositive in cases, courts have allowed extrinsic evidence on a motion to dismiss without converting the motion to summary judgment, including defenses such as lack of jurisdiction, improper venue, lack of capacity, and insufficient service.

Conclusion

Despite the seemingly stringent prohibition against offering evidence on a motion to dismiss, federal procedural law allows certain types of evidence to be introduced without converting a motion to dismiss to a motion for summary judgment. Thorough and consistent application of the "incorporation by reference" rule will enable courts to make determinations earlier in a proceeding, thereby leading to greater judicial economy and economic benefit for all parties involved in an action.

[Cathy Trent-Vilim](#) is a partner of Lamson Dugan & Murray LLP in Omaha, Nebraska. She obtained her juris doctor with honors from the University of Nebraska College of Law. Ms. Trent-Vilim focuses primarily in the areas of appellate practice, commercial litigation, and legal malpractice defense. She is currently the president of the Nebraska Defense Counsel Association and the chair of the Appellate Practice Section of the Nebraska State Bar Association. Ms. Trent-Vilim is a member of the DRI Insurance Law Committee.

[Janae Hofer](#) is a litigation attorney at Lamson Dugan & Murray LLP in Omaha, Nebraska. She obtained a Bachelor of Science, summa cum laude from Grace University and a Juris Doctor, cum laude from Creighton University. Ms. Hofer is admitted to practice in the Nebraska State courts and the United States District Court for the District of Nebraska.

Member News

Marc Williams Establishes Scholarship at West Virginia University College of Law



The West Virginia University College of Law recently announced that Class of 1985 graduate **Marc E. Williams** has endowed a scholarship to help law students offset the cost of their legal education. The Marc E. Williams Endowed Law Scholarship will be awarded to students who are graduates of Marshall University or residents of Cabell or Wayne Counties in West Virginia. Mr. Williams earned his bachelor's degree from Marshall. He served as DRI President in 2008-09.

"I owe my professional life to the West Virginia University College of Law. Everything that I've accomplished professionally started on Law School Hill, but my law professors always taught me that it is just as important to do good as it is to do well," Mr. Williams explained. "I was fortunate enough at WVU to have scholarship assistance to get me through law school. I promised myself then that if I ever had the good fortune to have the resources to fund a scholarship, I would do that so other deserving students could fund their education."

Mr. Williams is the office managing partner of the West Virginia office of Nelson Mullins Riley & Scarborough, where he serves as a team leader and as co-chair of the firm's Consumer, Mechanical and Products Practice Group. His practice focuses on class actions, mass torts, products liability and commercial litigation. He has had primary responsibility for over 100 trials and appeals during his career. He is a fellow of the American College of Trial Lawyers. In addition to DRI, he has served as president of the Defense Trial Counsel of West Virginia, Lawyers for Civil Justice, and the National Foundation for Judicial Excellence.

"In my leadership positions and other endeavors, I have tried to carry on the lessons I learned from my professors at the College of Law," Mr. Williams said. "They taught us that service to the profession is as important as doing excellent work for our clients. I'm hopeful that the endowed scholarship in my name will help a future law student learn these same lessons."

And The Defense Wins

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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.

Melanie S. Marrs and Tonya S. Rager



Kinkead & Stilz of Lexington, Kentucky is pleased to announce that DRI members [Melanie S. Marrs](#) and [Tonya S. Rager](#) were successful in obtaining a defense verdict

on behalf of a hospital and its nurses in Fayette County in a case involving claimed permanent peroneal nerve injury, causing foot drop, following open heart surgery. The plaintiff tried the case as a *res ipsa loquitur* case despite having expert testimony on causation. The hospital rebutted the presumption by presenting expert proof that such an injury can occur in the absence of negligence and the jury agreed finding in favor of the hospital and its nurses. The case tried was *Holger Reed and Christina Reed, His Wife v. Baptist Healthcare System, Inc., d/b/a Baptist Health Lexington*, Fayette Circuit Court, Division 8, Civil Action No. 16-CI-1604.

Jonathan Bruno



DRI member [Jonathan Bruno](#) of **Rivkin Radler** secured dismissal from the Appellate Division, First Department of a complaint asserting legal malpractice, fraud and Judiciary Law 487 claims against their attorney clients, with the Appellate Division reversing the trial court’s partial denial of their motion to dismiss.

Our clients represented the plaintiff in her divorce proceeding for nine months before seeking to be relieved as counsel. During the course of their brief representation, the plaintiff moved out of state, against our clients’ advice. The plaintiff settled her divorce action while represented by new counsel and agreed to return to Manhattan by a date certain. When she failed to do so, she ultimately lost custody of her daughter and was ordered to pay her ex-husband’s attorney’s fees.

The plaintiff sought to blame our clients for her loss of custody, maintaining that our clients were negligent in allegedly advising her that she should move out of state and had failed to move for attorneys’ fees, preventing her from timely returning to Manhattan. The Appellate Division concluded that the plaintiff’s legal malpractice claim related to attorneys’ fees failed because her various successor counsel had ample time and opportunity to make such a motion. The court also noted that since plaintiff agreed to forego an award of attorneys’ fees in the settlement agreement, she could not prove the causation element of her claim.

As to the remainder of her legal malpractice claim, the court held that the plaintiff’s alleged damages were caused by her failure to comply with the terms of the settlement of her divorce, not due to our clients’ alleged negligence. Further, the Appellate Division held that the fraud and Judiciary Law 487 claims were duplicative of the legal malpractice claim.

The Appellate Division also affirmed the trial court’s dismissal of the plaintiff’s breach of fiduciary duty claim, which was appealed by the plaintiff. The Appellate Division’s decision was featured in an article on the front page of the January 3, 2019, *New York Law Journal*.

Cathy Havener Greer and Katherine M. L. Pratt



In a jail suicide case defended by DRI members [Cathy Havener Greer](#) and [Katherine M. L. Pratt](#) of **Wells, Anderson & Race, LLC** in Denver, Colorado, the Tenth Circuit Court of Appeals affirmed the summary judgment

granted by the district court in favor of the defendant sheriff. See *Estate of Robert Vallina v. County of Teller Sheriff’s Office, et al.*, 2018 U.S. App. Lexis 34062. The case, brought under 42 U.S.C §1983 and the Fourteenth Amendment to the U.S. Constitution and Colorado’s wrongful death statute, alleged that the sheriff was deliberately indifferent to the deceased inmate’s serious medical needs and that the inmate died as a result of certain wrongful acts of the sheriff.

Robert Vallina was arrested and booked into the Teller County Detention Center in May 2014, and despite a history of mental health issues, he denied both present suicidal ideation and prior suicide attempts. The state court ordered a competency evaluation for Mr. Vallina at

And The Defense Wins

the Colorado Mental Health Institute-Pueblo. He was at CMHI-P from July 29, 2014 to August 29, 2014, and during that time was determined to be competent to stand trial. A psychiatrist at CMHI-P evaluated Mr. Vallina before his discharge and prepared the August 29, 2014 discharge report diagnosing him as malingering because he did not want to return to the jail. The report also indicated that he was “not aggressive or suicidal” and that he had no acute medical problems and was not prescribed any medication.

Mr. Vallina was returned to the Detention Center on August 29, 2014, where he was seen by a nurse and was cleared to be housed in the general population. At no time after his return to the facility did he demonstrate any conduct that indicated suicidal ideation. Mr. Vallina died by suicide in the early hours of September 2, 2014, less than an hour after sheriff’s deputies had conducted a routine cell check and saw him standing at the door to his cell.

The Estate urged the Tenth Circuit to apply an “objective reasonableness” standard rather than the standard of deliberate indifference to serious medical needs. The Estate argued that *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015), altered the standard for conditions of confinement and inadequate medical care claims brought by pretrial

detainees. The Second, Seventh, and Ninth Circuits have interpreted *Kingsley* as changing the standard and have adopted an objective test requiring reckless disregard. The Fifth, Eighth, and Eleventh Circuits have held that *Kingsley* applies only to excessive force claims brought by pretrial detainees, not claims related to conditions of confinement or inadequate medical care.

The Tenth Circuit concluded that the Estate’s claim failed under either standard as the Estate showed neither subjective disregard of a known risk nor objectively reckless disregard of a serious medical concern.

The Tenth Circuit found that a prison official “does not act recklessly or with deliberate indifference by failing to act to avert the suicide of a detainee who displays no outward indicators of suicidal ideation, actively denies suicidal ideation, and has been cleared by a psychologist, a psychiatrist, and other medical professionals to be detained in general population.”

The court also affirmed summary judgment on the state law wrongful death claim because the Estate had not identified any wrongful act by the sheriff resulting in the death of Mr. Vallina.

Sowing the Seeds of Change? Three New Federal Cannabis Bills Already Filed in 2019

By Darren P. Grady



Though the government shutdown continues, the new 116th Congress is hard at work and cannabis legislation appears to be a hot topic. In the first three weeks of 2019, three separate cannabis related bills were filed. Here is what you need to know:

The Regulate Marijuana Like Alcohol Act, introduced by Rep. Earl Blumenauer (D-OR), was actually initially introduced last year by Jared Polis (D-CO), who is now Colorado's governor. The Act, which reserved the bill number H.R. 420 (yes, you read that right), would bring about the most significant alteration in federal cannabis law this country has seen since cannabis was categorized as a Schedule I drug (along with heroin, LSD, and ecstasy, among others) by the Controlled Substances Act in 1970 (the "CSA"). *If passed, this law would take cannabis out of the CSA.* The Bureau of Alcohol, Tobacco, and Firearms would take over cannabis-related enforcement from the DEA. Transport of cannabis into states that have yet to legalize the drug would remain against the law.

The Sensible Enforcement of Cannabis Act, introduced by Rep. Lou Correa (D-CA) with bipartisan support is aimed at codifying the protections that were originally introduced by the Cole Memo, which was rescinded by former Attorney General Jeff Sessions in January of 2018. This law would, as the Cole Memo did, direct the Attorneys General to focus on specific cannabis enforcement priorities such as the provision of cannabis to minors, cannabis revenue funding criminal organizations, transport of cannabis from legal use states to states where it remains illegal, cannabis related violence, and drugged driving. This law would provide peace of mind to the ever growing ranks of medical patients, adult use/recreational consumers, retailers, distributors, and cultivators working in cannabis markets within the legal parameters of their respective states.

Finally, the Compassionate Access, Research Expansion, and Respect States (CARERS) Act of 2019, was introduced by Rep. Steve Cohen (D-TN) with two Republican co-sponsors. This law aims to amend the CSA to explicitly state that certain penalties (including criminal) would not apply to individuals or entities that are in compliance with the laws of the state in which they are located. In effect, this bill would reduce the problematic interplay between state and federal cannabis laws. This law would also remove cannabis from Schedule I of the CSA and delist "cannabidiol" (CBD) from the CSA. Finally, the Act would also ease cannabis research restrictions and allow VA physicians to recommend veteran participation in state medical cannabis programs.

It remains to be seen if any of these bills will survive the legislative process in 2019. The Senate's current Republican Majority appears to be the most significant hurdle to any federal cannabis legislation. Nevertheless, senators will certainly be keeping the 2020 election in mind, knowing that some studies now show that a majority of Republican voters actually support cannabis legalization. While it may not happen this year, federal cannabis laws will likely be radically transformed in the near future. Businesses from small independent retailers to corporate distributors, as well as federally regulated banking institutions and insurance companies, should keep an eye on these bills (and others that will undoubtedly be introduced) and prepare for these significant changes.

Darren P. Grady is a partner of SmithAmundsen LLC in Chicago, where he clients in all types of matters ranging from personal injury and wrongful death to defamation and discrimination. He serves his clients through open and candid communication and zealous advocacy in and out of the courtroom. Darren works within a variety of industries, representing banks, insurance companies, manufacturing companies, medical cannabis businesses, and restaurants.

2019 Law Student Diversity Scholarship

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

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

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

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

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

Applications and all other requested materials must be received by April 1, 2019. Click [here](#) to access the 2019 Law Student Diversity Scholarship application.

View This Week's Civil Rights and Governmental Liability Seminar from Your Home or Office!

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In 2019, make one of your priority New Year’s resolutions to establish *For The Defense* Digital Edition as your “Go To” DRI publication. If you have not had the chance to do so already, **NOW** is the time to take advantage of the opportunity to view DRI’s flagship publication in its online format. Please take a minute to watch this brief [video](#) that provides an overview and outlines the benefits and advantages of making *FTD* Digital Edition your “go to” DRI publication.

Great news! *FTD* Digital Edition is also available as an App (click the following links to download the App on

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Five Foley Mansfield Offices Give Back to Their Communities

By **Melissa Roeder**



Several of Foley & Mansfield's offices took on philanthropic activities during the recent holiday season.

The **St. Louis** office selected the St. Louis Crisis Nursery Holiday Hearts Program as the holiday fundraiser and assembled holiday wish bags for children of different age groups. The holiday wish bags are matched with children in need for the holiday—children staying at one of the crisis nurseries on and around the holidays, children staying in other shelters around St. Louis (through the Homeless Outreach Program), and children whose families will have crises come up over the holiday season such as house fire, eviction, domestic violence, etc.

The **Edwardsville** office adopted a family of four (a single mother with a 15-year-old boy, an 8-year-old boy, and a 7-year-old girl) from the Glen-Ed Food Pantry. The giving started with a Christmas tree and ended with bicycles for the kids and a new coffeemaker for mom.

Walnut Creek teamed up with Mt. Diablo to collect food donations to HELP STOP HUNGER, and **Seattle** joined Wellspring Family Services by collecting toys, winter clothing, and hygiene items that will be given to families experiencing homelessness.

Finally, the **Minneapolis** office paired with "Good in the 'Hood'" and purchased \$1,000 in gift cards and other requested items.

Melissa K. Roeder, of counsel in Foley & Mansfield's Seattle office, focuses her practice on defending asbestos matters and building a marijuana product liability defense practice. She is the DRI Northwest Region Director and chair of the DRI Philanthropic Activities Committee.

Discharge and Nondischargeability in Bankruptcy from the Surety's Perspective

Please take advantage of one of the many offerings that [DRI LegalPoint](#) has to offer and read Robert J. Berens' article, "[Discharge and Nondischargeability in Bankruptcy from the Surety's Perspective](#)," online today. Robert J. Berens is a partner of Langley LLP in Phoenix, where he practices surety, bankruptcy, construction, secured transactions, and commercial litigation.

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Editor's Note: In each week's issue of *The Voice* throughout 2019, a new DRI On-Demand item will be featured. For a complete list of currently available DRI On-Demand items, click [here](#).

Preparation and use of *amicus curiae* (friend of the court) briefs are an important part of appellate practice in federal and state courts. They give individual corporations, trade associations, professional groups, and other organizations a voice—a direct line of communication to appellate courts—on the significance, practical impacts, policy implications, and merits of important legal issues. This

webinar covers the strategic use of amicus briefs, the rules governing their preparation and submission, and amicus brief style and content. In-house counsel and outside attorneys who manage or handle appeals and may want to solicit amicus support, as well as attorneys who are engaged to draft (or would like to be engaged to draft) amicus briefs, will benefit from this webinar.

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

Upcoming Seminars

Product Liability, February 6–8, 2019



dri Product Liability Conference

February 6–8, 2019
Austin, TX

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Welcome to Austin, the preeminent city for music, food, and fun. To take advantage of the unique location, we tailored this year’s conference to have the most networking events ever at a DRI Product Liability Conference. Check out all the events on the next page! Also, the main stage and SLG presentations are chock-full of dynamic speakers, concentrating on all aspects of defending the product manufacturer, from voir dire to closing arguments, with legal writing and depositions in between—and even a musical production! You do not want to miss it! For the first time ever, conference registration includes a free Product Liability Case Law Update Webinar, presented by the Young Lawyers SLG of the DRI Product Liability Committee. Click [here](#) to register.

Toxic Torts and Environmental Law, March 14–15, 2019



dri Toxic Torts and Environmental Law Seminar

March 14–15, 2019
New Orleans

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DRI is back in the Big Easy with the latest in environmental and toxic tort law to take your practice to the next level. Come to New Orleans to polish your skills with the best lawyers, judges, and experts from across the country. This is the premier gathering for the defense bar, focusing on litigation tactics, science, and regulatory updates, presented in one of America’s most enjoyable and hospitable cities. Click [here](#) to view the brochure and to register.

Medical Liability and Health Care Law, March 20–22, 2019



dri Medical Liability and Health Care Law Seminar

March 20–22, 2019
Nashville, TN

REGISTER TODAY

Join your colleagues in historic Nashville for the 2019 DRI Medical Liability and Health Care Law Seminar. The annual two-day seminar has something for everyone, with comprehensive instruction by leading attorneys, physicians, and in-house counsel on the hottest topics. Networking events include a Women in the Law luncheon, a Young Lawyers-sponsored gathering in downtown Nashville, a DRI for Life-sponsored run/walk, and a community service project with Operation Gratitude, mailing care packages to overseas military service men and women. Arrive early and participate in the first-ever, in-depth, and interactive session with both the DRI Litigation Skills and Medical Liability and Health Care Law Committees on cross-examination of a life care planner. Register now to ensure your place at this cutting-edge seminar. Click [here](#) to view the brochure and to register.

Trial Skills and Damages, March 20–22, 2019



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Las Vegas

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The evolution of legal practice over the past several decades has been shaped by technological innovation. Technology simultaneously provides a medium through which we can educate juries on complex matters and provides lawyers with the tools that they need to make better decisions leading up to and during trial. That is not to say that technology dominates the courtroom. Come learn how you can blend proven trial tactics and technology through presentations and demonstrations on effectively navigating the complex damages case, including mock oral arguments and hard-hitting technology-focused presentations from experts and consultants. Join us at the new Park MGM Las Vegas Hotel this March for practice-enhancing education and networking. Click [here](#) to register for the program.

Upcoming Seminars

Life, Health, Disability & ERISA, April 3-5, 2019



DRI's Life, Health, Disability, and ERISA Seminar is the annual must-attend event for anyone whose practice touches any of these areas. It offers 23 substantive presentations, in which leading practitioners will provide insights into trends and developments in the law, as well as practical tips you will not want to miss. All of your favorite networking opportunities are back, including the Women's Networking Dinner, dine-arounds, a post-dinner reception hosted by the Young Lawyers Subcommittee, multiple DRI for Life events and new this year, an on-site community service project. Click [here](#) to register for the program.

Insurance Coverage and Claims Institute, April 3-5, 2019



Get ready for an insurance coverage extravaganza! Chicago has always been known for its pizza, museums, jazz, and architecture. But after the 2019 DRI Insurance Coverage and Claims Institute, you can add elite continuing education and networking events to the list! Delve into the most pertinent claims topics facing the insurance practitioner today, and rub elbows with peers from across North America who are looking to meet you. Sign up now to experience all of this and more in the Second City. Click [here](#) to view the brochure and to register.

Construction Law Seminar, April 10-12, 2019



The construction industry is rapidly being confronted by unprecedented changes—shortages of skilled workers, new technologies, and economic pressures caused by recent geopolitical events are all forcing stakeholders to adapt rapidly to the changing climate. Those who cannot adapt to these changes risk falling behind, or becoming obsolete. All attendees—construction professionals, attorneys, and insurance professionals alike—will benefit from the educational and networking opportunities presented at this year's seminar. Click [here](#) to view the brochure and to register.

Upcoming Webinars

Welcome to the New Normal: Synthetic Drugs of Abuse, February 13, 2019, 12:00pm–1:00pm



Law enforcement officers and first responders across the country face serious challenges as they interact with suspects and patients under the influence of illegal drugs. Those challenges have increased in recent years as the proliferation of synthetic drug abuse abounds. These drugs have enhanced side effects and rarely show up on standard drug screenings. This webinar will present a general overview of synthetic drugs of abuse as well as some case-based discussion. We will also discuss limitations of drug testing and predictions for what is to come regarding illicit drug use. We will also discuss best practices for attorneys defending excessive force, false arrest, and malicious prosecution cases (among others) involving plaintiffs under the influence of these types of drugs. Click [here](#) to register.

Counseling Drug and Medical Device Companies on Risk Prevention Strategies, March 6, 2019, 12:00pm–1:30pm



Pharmaceutical and medical device manufacturers encounter numerous risks which, if not handled properly, could lead to litigation. Risks include the challenges of properly marketing products, complying with numerous regulations and emerging adverse events. Mass tort litigation, and challenges based on the False Claims Act and the Antikickback Statute among others, pose perpetual risks along with handling the erosion of time tested defenses such as the learned intermediary doctrine. With an ever-shifting tide, it is important to stay current on these topics. Register now to learn from top attorneys whose focus is watching for and defending against these risks. Click [here](#) to register.

Challenging Plaintiff's Use of Federal Regulations to Bolster Negligence Claims, March 13, 2019, 12:00pm–1:00pm



This "Lunch and Learn" webinar will provide an in-depth look at the Federal Motor Carrier Safety Regulations ("FMCSRs") relating to driver qualification, hours of service, and equipment maintenance and will address how such regulations are used by plaintiffs to establish "safety rules" that bolster their negligence claims. Attendees will also learn about recent court decisions analyzing the extent to which an alleged violation of the FMCSRs by a motor carrier or driver can support a plaintiff's negligence claims and will take away practical pointers on how to best combat a plaintiff's use of such regulations. Click [here](#) to register.

State Membership Chair/State Representative Spotlight

Arkansas



State Membership Chair

Joseph W. ("Joey") Price II, Member, Quattlebaum Grooms & Tull PLLC

Areas of Practice: Real Estate and Commercial Litigation

DRI member for three years.

Joey's experience with DRI: "DRI is an amazing organization that provides useful and substantive information to its members. Combined with the networking opportunities, the value one can receive with his or her DRI membership is endless."

Fun Fact: "I am a huge fan of professional wrestling and have the unique ability to bring almost any conversation back to one of my many "rasslin' stories."



State Representative

M. Stephen Bingham, Director/Executive Committee Chair,
Cross Gunter Witherspoon & Galchus PC

Areas of Practice: Airport Law, Product Liability Defense, Insurance Defense, Construction Law

DRI member for 33 years.

Steve's experience with DRI: "I am a longtime member who finally got really involved about 5 or 6 years ago. Once I took the plunge, I realized what I had been missing for all of those years. You can't appreciate all that DRI is and all that it offers until you become active!"

Fun Fact: "My office is filled with Superman paraphernalia, which always causes firm visitors to come to a dead stop as they walk past my door."

New Member Spotlight

Adrianna Hughes, Higgins Cavanagh & Cooney LLP



Attorney [Adrianna Hughes](#) is an associate in the Litigation Department of Higgins Cavanagh & Cooney LLP in Providence, Rhode Island. She is admitted to practice before the state courts of Rhode Island and Massachusetts as well as the U.S. District Court for the District of Massachusetts. She previously was employed as an attorney with a regional, Boston-based law firm where she gained valuable litigation experience.

Ms. Hughes is a summa cum laude graduate of the University of Scranton and a graduate of Boston College Law School. She began her legal education at Suffolk University Law School, during which time she received the Best Oral Advocate Award – Legal Practice Skills, Best Brief Award – Legal Practice Skills, and Jurisprudence Award – Property II.

During law school, Ms. Hughes served as a law clerk to the Honorable Richard T. Tucker of the Massachusetts Superior Court. Before law school, she was employed as a paralegal at law firms in Pennsylvania and Massachusetts.

She is a member of DRI, the Massachusetts Bar Association, the Rhode Island Bar Association, and the Massachusetts Defense Lawyers Association.

Since joining Higgins, Cavanagh & Cooney, Ms. Hughes has focused on the areas of general insurance defense, employment law, and workers' compensation defense.

Quote of the Week

“One kind word can warm three winter months.”

—Japanese proverb.