



Raising the Bar

The newsletter of the
Young Lawyers Committee

3/30/2020

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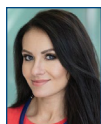
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Featured Articles

Best Practices in Protecting Medicare's Interests

By Perri J. Koll



settlement.

You have settled that big case you have been working on. You receive the executed release from plaintiff and take a sigh of relief—you're done. But are you? That depends if you have considered Medicare's potential interest in the

obligations to reimburse Medicare and assist Medicare in its efforts to be reimbursed.

Failure to comply with the reporting requirements may result in a civil money penalty of up to \$1,000 for each day of noncompliance. However, there has been no evidence of enforcement in the form of civil money penalties to date.

Medicare Secondary Payer Act—Reporting and Reimbursement Requirements

In 1980, Congress enacted amendments to the Medicare statute, referred to as the Medicare Secondary Payer Act (42 U.S.C.S. §1395y(b)) ("MSPA") in response to the cost of the Medicare program. The MSPA aimed to reduce Medicare payouts by making Medicare secondary to other sources, including personal injury settlements and workers' compensation payments.

Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 ("Section 111") added a mandatory reporting requirement that requires providers of liability insurance, self-insureds, no fault insurance, and workers' compensation insurance to determine the Medicare entitlement of plaintiffs and report certain information such as liability settlements and judgments for Medicare beneficiaries. The Centers for Medicare and Medicaid Services ("CMS") then have the power to use the reported data to undertake appropriate reimbursement/recovery actions to recover funds paid for services rendered to its beneficiaries. In addition to reporting requirements are

Requirement to Satisfy Medicare's Future Interests

Medicare's interests must be taken into account in personal injury suits and settlements for both reimbursement of liens for funds already disbursed, conditional payments, and for Medicare's potential future interest in a plaintiff's medical care. Medicare must be protected so that it does not pay for future medical expenses that have been recovered by a plaintiff and to ensure that Medicare is secondary to settlement funds. See Department of Health & Human Services, Centers for Medicare & Medicaid Services, *Division of Financial Management and Fee for Service Operations, Region VI* (May 25, 2011).

How to Satisfy Medicare's Future Interests

Though it is clear Medicare's interests must be protected, CMS does not mandate a specific mechanism to protect those interests, nor has CMS published any formal guidance for how to address Medicare's Future interests in a settlement/judgment.

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A September 30, 2011 Memorandum from CMS stated if a physician certifies that treatment for the tortious injury has been completed and future medical will not be needed, Medicare's interests have been satisfied.

One of the ways attorneys and their clients have attempted to preserve Medicare's interests in personal injury and workers' compensation suits is through a Medicare Set-Aside ("MSA"). An MSA is an agreement to allocate a portion of a settlement to pay for future medical services, which deplete before Medicare will pay for related treatment. Centers for Medicare & Medicaid Services, *Workers' Compensation Medicare Set Aside Arrangements*, <https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Workers-Compensation-Medicare-Set-Aside-Arrangements/WCMSA-Overview> (last modified Jan. 23, 2020). Though attorneys routinely create and obtain MSA's to protect their clients' interests, "[n]o" federal law requires set-aside arrangements in personal injury settlements for future medical expenses." *Sipler v. Trans Am Trucking, Inc. et al.*, 881 F. Supp. 2d. 635 (D.N.J. July 24, 2012); see also *Aranki v. Burwell*, 151 F. Supp. 3d 1038 (D. Az. 2015); *Silva v. Burwell*, No. 16-cv-488, 2017 U.S. Dist. LEXIS 195032 (D.N.M. Nov. 28, 2017).

CMS has a review process for MSA's for workers' compensation cases but not for personal injury cases. See *Workers' Compensation Medicare Set Aside Arrangements*, *supra*. CMS defines a Workers' Compensation Medicare Set-Aside Arrangement ("WCMSA") as a financial agreement that allocates a portion of a workers' compensation settlement to pay for future medical services related to the workers' compensation injury, illness, or disease. These funds must be depleted before Medicare will pay for related treatment. The creation of a WCMSA is recommended by CMS in the workers' compensation setting to protect Medicare's interests, but is not required. Further, while there is no requirement to submit a WCMSA for CMS review, submission is available and recommended. No such availability exists for MSA review in the personal injury setting.

An alternative to creating a set-aside could be purchasing a private health insurance policy which would pay for future medical expenses that would otherwise be covered by Medicare. Further, the 2012 CMS Federal Register Notice suggests an option for the individual/beneficiary to pay for all related future medical care until their settlement is exhausted and they document it accordingly. 77 Fed. Reg. 35917.

Potential for Future Guidance

CMS has approached the idea of policymaking clarifying when and how civil penalties may be issued for Section 111 noncompliance and how to best protect Medicare's future interests. In 2012, CMS published in the Federal Register advance notice of proposed rulemaking related to the Act and protecting Medicare's interests for future medical treatment in liability cases. 77 FR 35917. The notice sought to clarify obligations to Medicare with respect to claims involving automobile and liability insurance (including self-insurance), no fault insurance, and workers' compensation when future medical care is claimed. The notice was in response to a high volume of requests for official review of proposed liability insurance MSA amounts. The notice was withdrawn in 2014. RIN 0938-AR43. In 2016, CMS issued an alert regarding its intent to consider the review of Medicare Set-asides in both liability and no-fault cases.

In 2019, CMS issued RIN 0938-AT85, which is a proposed rule to "ensure that beneficiaries are making the best health care choices possible by providing them and their representatives with the opportunity to select an option for meeting future medical obligations that fits their individual circumstances, while also protecting the Medicare Trust Fund." While no rule has been passed to date, the near future may bring rules clarifying when and how penalties may be issued for Section 111 Medicare Mandatory Insurer Reporting noncompliance.

Conclusion: Be Aware of and Consider the Issue

Understand that Medicare is entitled to reimbursement regardless of whether or not there has been a finding or admission of liability and a settlement alone makes your client a primary payer. The MSPA gives Medicare subrogation rights for its conditional payments, giving Medicare a direct right of action to obtain reimbursement from a primary payer and not just the beneficiary. See *Humana Ins. Co. v. Bi-Lo, LLC*, No. 18-cv-2151, 2019 U.S. Dist. LEXIS 163063, at *6 (D.S.C. Sept. 24, 2019) (*citing* 42 C.F.R. §411.24(i)(I)).

To protect your clients, identify whether a Section 111 reporting obligation exists and ensure that your client's Medicare risk is addressed. When negotiating a settlement, a defendant must ensure that the Medicare lien for past medical expenses will be satisfied and must reasonably consider Medicare's interests if there is the potential for future medical expenses.

Use discovery tools early on, such as interrogatories and depositions, to determine a claimant's Medicare status and

the nature of Medicare's interest, if any. Document a claimant's Medicare status in the release with a statement of how Medicare's interests have been protected and include which party will be responsible for reimbursing liens.

Determine if proceeds from the settlement must be allocated to Medicare's future interests and document why the amount of any such allocation is reasonable to protect Medicare's interests. Speak with your client about whether any allocation should be submitted to CMS for their optional review, even though the review process is only available in Workers' Compensation cases. If a certain amount of proceeds are being allocated to Medicare, consider issuing multiple checks, one specifically for the proceeds being allocated to Medicare.

Communicate with your clients about the issue to determine if they have an internal procedure for protecting

Medicare's interests. If they do not have an existing internal procedure, speak with them about creating a uniform approach to apply in their cases to evidence that they are taking Medicare's interests into account. If the risk associated with Medicare in a given case is large, consider recommending your client retain an attorney who specializes in protecting Medicare's interests to provide an opinion based on the particular facts of that case.

Perri J. Koll is an attorney with Connell Foley LLP in Newark, New Jersey. Perri focuses her practice on defending clients in complex litigation, including cases related to products, premises, professional and general liability. Perri can be reached at pkoll@connellfoley.com.

Time to Find Your "A" Game in the A!

By Brett Tarver



*Welcome to Atlanta, where the YLs play,
And we raise our A game like every day,
Big beats, hit streets, in-house counsel roamin',
And CLEs won't start at 8 in the mornin' (we promise!).**

As you may have guessed, the seminar planning team is getting hyped for this year's [Young Lawyers Seminar](#) in my one-and-only hometown—Atlanta! Serving as the chair for Seminar Planning while putting together the programming and activities for #DRIYLATL2020 has been fantastic, and I, along with my vice chairs John Dollarhide and Kate Van Namen, cannot wait for you all to come to Atlanta to see what we have in store for you!

If you have never attended a DRI Young Lawyers Seminar before, this is definitely the year to start. The Young Lawyers Committee is unique from the majority of committees that comprise DRI in that it is not focused on substantive areas of law, but rather on creating a space in which young lawyers can hone their lawyering skills (no matter their area of practice) while developing genuine relationships with attorneys across the country. This two-punch combination results in a strong launching pad for young lawyers who get plugged in to not only become better advocates for their clients, but to also start building a foundation from which business may grow in the future.

First up, you will have a chance to hone actionable skills during this year's Young Lawyers Seminar at an unprecedented rate. We'll kick off the Seminar with a cross-examination drills workshop on Wednesday afternoon where young lawyers will be split into small groups led by fantastic faculty, including trial-seasoned DRI First Vice President Doug Burrell, reptile-argument-crushing Matt Moffett, voir-dire-slaying Pamela Lee, and witness-sparring Brannon Arnold. Young lawyers who attend this workshop will be on their feet practicing skills like impeaching a witness with prior testimony or using a document to cross-examine an expert. Useful in both the courtroom and at depositions, do not miss this opportunity to hone your cross-examination skills and receive valuable feedback in real-time from seasoned litigators.

After the workshop on Wednesday, young lawyer attendees will continue to engage in skills-based learning through demonstrative sessions on Thursday and Friday of the Seminar. Learn from former theater major Stephanie Holcombe on how to use your voice and expression to creatively and compellingly persuade both judges and juries to your legal argument; watch as senior young lawyers prepare company witnesses for depositions and trial and discuss the potential ethical pitfalls that may arise during preparation; hear from former YL Chair Baxter Drennon on

how to use an iPad and other technological advancements to step up your advocacy game; and watch as a skilled mediator jumps between two parties to reach a settlement; and much more! With a focus on providing young lawyers with skills-based training, the seminar planning team has put together a fast-paced, demonstrative-heavy line up of speakers and topics for #DRIYLATL2020. You will walk away with increased knowledge and skills helpful to your advocacy, no matter your practice area.

Second, the time to start developing relationships with your DRI peers is NOW. A seasoned lawyer skilled in developing business once told me, “How do you get clients? From your friends.” And it’s true, whether your friends go in-house, or they have clients who need help in your city/state/practice area, legal practice is a “who you know” business. Come to the Young Lawyers Seminar to start growing your “who you know” long before the majority of your fellow associates even have business development on their radars! In addition to making connections with other young defense lawyers from around the country, you will have the opportunity to network with the eight in-house counsel speakers lined up to speak, like Alan Bryan (Walmart), Charlie Britt (NCR), Gene Kim (Lyft), and more! Like YL Seminars in the past, you will also have the oppor-

tunity to sign up for Fast Pitch, a speed-dating-like event where young lawyers get to sit down one-on-one with in-house counsel, make their business pitch to a potential client, and receive immediate constructive feedback from the in-house counsel. This event only occurs at the YL Seminar and has provided invaluable training for past YLs on how to pitch their work!

Finally, if you’ve never been to the A (or the ATL), this Seminar will not only give you the opportunity to knock out your yearly CLE requirements, but will also allow you to explore the city that rose from the ashes after the Civil War to become the diverse, booming capital of the South. From touring the College Football Hall of Fame to the Center for Civil and Human Rights; cheering on the Atlanta Braves or the ATL United; experiencing a foodie’s delight in Buckhead / Midtown / Westside; finding niche dive bars in East Atlanta, the Highlands, Little 5, or Inman Park; or checking out one of the seventeen major breweries in the city, Atlanta has something for everyone. Home of the busiest airport in the world, Atlanta’s an easy trip from anywhere in the country, so you have no excuse to miss out this year.

It has been an honor to plan the 2020 Young Lawyers Seminar with such a fantastic team and subcommittee. We look forward to seeing you in Atlanta this June!

**To catch the real Atlanta flavor, give “Welcome to Atlanta” by Jermaine Dupri and Ludacris a listen.*

Brett A. Tarver is an associate at Troutman Sanders in the Atlanta office. She is an up-and-coming trial lawyer who focuses her practice on the defense of drug and medical device manufacturers. Barred in Georgia and Florida, Brett has tried cases across the United States and brings her

trial knowledge to her advocacy throughout the life of the case. She is a Steering Committee member of DRI’s Young Lawyers Committee and is an active member of the DRI Drug and Medical Device and Product Liability Committees.

Article of Note

Vetting Experts Properly

By Ebony S. Morris



Properly vetting an expert witness is imperative to ensure that *Daubert* challenges are not successful. Generally, vetting an expert requires understanding and researching the expert’s background, finding discrepancies in credentials, and matching the expert with one’s case. Young lawyers faced with this daunting task of retaining the right expert should utilize the following tips.

Use Your Resources

One of the greatest ways to find an expert is through other attorneys who have experience with experts who may fit the bill. Start by asking attorneys at your firm and, if necessary, lawyers at other firms. Young lawyers should also utilize their resources by reaching out to lawyers who may have retained the expert witness in other cases. For

example, membership in organizations such as the American Bar Association (“ABA”) and our very own DRI offers significant advantages in searching for expert witnesses. Searchable databases within these groups also help young attorneys to look for and vet the expert prior to the first interview. Another invaluable resource may be your client. Clients have excellent resources for locating potential experts, and they may be familiar with respected experts in the field and may also know which experts to avoid.

Know the Expert’s Background Inside and Out

Finding a qualified, experienced, and knowledgeable expert who is free of conflicts is certainly the goal, yet, it is only half the battle. Before making the decision to retain an expert, young lawyers should always delve into the expert’s curriculum vitae and references to confirm that the potential expert is in good standing within their field. Practicing due diligence can avoid an embarrassing and potentially case-damaging situation if the expert’s credentials are unrealistic.

First, young lawyers should research whether the potential expert has a criminal record. Although this seems like a no-brainer, one can never be certain that an expert does not have any skeletons in their closet. It goes without saying that young lawyers should not retain a formerly convicted felon to testify as an expert witness. However, even the slightest indiscretion, such as motor vehicle violations, may serve as a great cross-examination area to impeach the expert’s character and credibility. Be sure to thoroughly research your potential expert’s criminal and civil background.

Next, when deciding whether to admit expert testimony, the court will consider the expert’s opinions within the framework for admitting or excluding the expert’s testimony. When vetting a potential expert, it is important to analyze court records to identify the key reasons for exclusion or admission of their previous opinions. *Daubert*/*Frye* gatekeeping challenges should be monitored across:

- Federal and State Cases;
- Jury Verdicts and Settlements;
- Federal and State Agency Decisions;
- Court Documents – Trial Filings, Appellate Briefs, Trial Orders, Dockets; and
- Google Scholar – Legal Opinion Search.

Finally, when reviewing an expert’s litigation history, young lawyers should note the expert’s number of case

reviews, depositions, and trial testimonies, as well as whether the expert is plaintiff-friendly or defense-friendly. In some cases, an expert’s litigation experience can also affect the amount of time initial expert disclosures take, and if the case is pending in federal court, it is beneficial to have an expert with federal court experience, namely for expert witness disclosures, which can be a detailed and exact process. If the expert has no experience with expert disclosures, then young lawyers will have to spend more time shepherding the disclosure process. However, in many state court proceedings, prior litigation experience for the expert is not essential. When it comes to disclosures, the most important thing to determine are the rules that govern expert witness disclosures in the relevant jurisdiction.

It is vital to ensure each prospective expert has enough relevant education, qualifications, and experience in her field. Many experts require specific licenses to practice in their field, and likewise should possess a valid and current license when acting as an expert witness. For each expert candidate you are considering, review the current status of all relevant certifications, including expiration dates and certification history.

Meet the Expert

Interviewing the potential expert is invaluable. First, face-to-face interviews allow young lawyers the opportunity to assess the expert as a potential witness, and further, to determine how the expert will be perceived by the fact finder. The expert may appear credible on paper; however, if the expert does not present well during the interview, then the expert’s credentials will have little to no impact on the outcome of the case, and the expert may even hurt your case more than helping.

Next, interviewing the expert provides an opportunity to obtain information not readily ascertainable from the expert’s curriculum vitae, website, etc. For example, while the expert may have provided a variety of cases where they has acted as an expert, young lawyers should explore in what capacity the expert acted. This information is especially important if the expert acted only in a consulting role and did not provide an opinion that is publicly available. Young lawyers may also discover how often the expert has provided deposition testimony, written a report, provided live trial testimony, etc. Face-to-face interviews also allow young lawyers to explore the expert’s previous experience with cases involving similar facts and the expert’s opinions in those cases.

Final Thoughts

Young lawyers must start the vetting process early. As discussed above, this is efficiently done by asking other lawyers and experts about your potential expert. Young lawyers vetting experts must understand the subject matter of the case to know if the expert has adequate qualifications and testing methods. Many cases have been lost where an expert was unprepared to deal with opposing counsel who had done their research. It is the young lawyer's responsibility to ensure that their expert witness connects with the jury in a way that engages the jurors in the expert's testimony. Identifying expert witnesses may

seem like an overwhelming task; however, by using available resources, properly researching the expert witness, and meeting with the expert witness, young lawyers will be able to efficiently and accurately retain the right expert.

Ebony S. Morris is an associate attorney in the New Orleans, Louisiana office of Garrison, Yount, Forte & Mulcahy, LLC. Her practice areas include automobile liability, premises liability, products liability, and mass tort litigation. Ebony can be contacted at emorris@garrisonyount.com.

Leadership Note

The Chair's Corner

By Stephanie M. Wurdock



IMPOSTOR SYNDROME [noun]: *The persistent inability to believe that one's success is deserved or has been legitimately achieved as a result of one's own efforts or skills; a real term for when people feel like they're faking it, but aren't.*

If you are anything like me, the first few months of 2020 have brought a flood of "So-and-so made partner" posts on social media. Maybe you are even one of the many people who were promoted this year (and if so—Congrats!). Or maybe you are not one of those people but you hope to be elevated to partner within the next few years. Or maybe you are a newly barred attorney who has no idea what you are doing and you pray to the universe every day that you will not get fired. I get it—I have been in all of those positions!

Do you feel like maybe you do not deserve your promotion? Or your amazing job? Or that award you won last month? Maybe you feel like you somehow lucked into even passing the bar exam. Do you worry that one day someone is going to notice that you are not the brilliant attorney everyone thinks you are?

You, my friend, might have Impostor Syndrome.

According to the Merriam-Webster dictionary, impostor syndrome (which can be traced back to 1978), is commonly understood as a false and sometimes crippling belief that one's successes are the product of luck or fraud rather than skill. People with impostor syndrome may feel "a nagging

fear of being 'found out' as not as smart or talented or deserving or experienced or [fill in the blank] as people think." Margie Warrell, *Conquer Impostor Syndrome* (Jul. 2, 2017), <https://margiewarrell.com/impostor-syndrome/>. Some researchers have linked this feeling of inadequacy with perfectionism, especially in women and among academics.

Does this sound familiar? If so, you are in good company. Most of us are right there with you. According to an article by the Fast Company, impostor syndrome affects up to 70 percent of working professionals, including the likes of Facebook COO Sheryl Sandberg, actress Natalie Portman, and former Starbucks CEO Howard Schultz. Anisa Purbasari Horton, *This is How I Tried to Fight Impostor Syndrome When I Got Promoted* (September 4, 2018), <https://www.fastcompany.com/90224326/5-ways-to-deal-with-impostor-syndrome-at-work>. And I have good news—you can conquer this! The following are five tips for improving your self-confidence at work and beating Impostor Syndrome.

Dress the part. Research shows that when we dress more professionally, we are more productive and engaged, and we command more authority. We are also more confident in our abilities. In recent years, many law firms have relaxed their dress codes to allow for a more casual workplace. And that is all well and good. But if you are suffering from impostor syndrome, consider dressing up instead of down. Wear a suit (or at least a jacket) every

day for two weeks and see if you feel more capable, more professional, more sure of yourself. And while you are at it, strike a “power pose” or two. See Shana Lebowitz & Melia Robinson, *The ‘Power Poses that Will Instantly Boost Your Confidence Levels* (Dec. 22, 2015), <https://www.inc.com/business-insider/amy-cuddy-the-poses-that-will-boost-your-confidence.html>).

Stop comparing. We all know that comparison is the thief of joy. And as Margie Warrell writes in her book *Make Your Mark: A Guidebook for the Brave Hearted*, “Comparing yourself is a race you’ll never win. Don’t get caught up focusing on the gifts or good luck of others. Focus only on making the most of your own.” What if you stopped comparing yourself to the woman who’s been practicing law for 30 years? What if you focused inward instead and spent some time appreciating our own unique talents and value? The guy down the hall may write a flawless brief, but YOU rock at connecting with potential jurors in voir dire. We all have strengths. Identify yours and embrace them.

Let go of perfection. I am not perfect. He is not perfect. She is not perfect. And you are not perfect. You know this is true, so why do we all think that if we try hard enough we can actually be perfect? Instead of trying to be *the* best, focus on being *your* best. Give your best effort, do not take shortcuts, and be proud of what you’ve put into the world—imperfections and all.

Keep a “Kudos” file. Create a folder in your email inbox to save emails from clients, colleagues, and friends congratulating you on a job well done or thanking you for going above and beyond. I have kept a “thanks/kudos”

folder since 2013, and when I am having a bad work day, clicking through a few of those emails always boosts my confidence and reminds me that I actually *am* very good at my job.

Brush up on your skills. Sometimes the best remedy for feeling incapable and unworthy is to spend a little extra time brushing up on your skills. Lucky for you, the DRI website has tons of litigation and practice-specific publications and pointers at your disposal. Not that great at taking depositions? Purchase DRI’s *Deposition Manual*, which is available through DRI Legal Point. Don’t know much about how to try a case? Check out the FREE *Associate’s Handbook* available [here](#). Need a primer on a certain practice-specific area of law? Log in to DRI’s Legal Point database and search for relevant articles.

If you are reading this article, you are probably a young lawyer. Which means you are still trying to figure this whole practicing law thing out. Just like the rest of us. Be kind to yourself. Be confident. And be proud of the things you do well. You deserve it. And you are not a fraud.

“You don’t have to attain perfection or mastery to be worthy of the success you’ve achieved.” – Margie Warrell

Stephanie M. Wurdock is a Member with Sturgill, Turner, Barker & Moloney, PLLC, in Lexington, Kentucky. Stephanie is a healthcare litigator, working with healthcare providers, insurers, and risk managers to defend claims of medical malpractice, wrongful death, and nursing home negligence. She is the Vice Chair of the Young Lawyers Committee.

DRI Young Lawyers Member Spotlight

Brian Barnas



How and why did you first get involved with DRI?

Hurwitz & Fine has been involved with DRI for a long time. When I was in my first year at the firm, I was given the opportunity to attend the Insurance Law Committee’s Young Lawyers Coverage and Claims seminar in Chicago. It was an excellent program that served as a gateway into DRI and the Insurance Law Committee.

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

My practice focuses on insurance coverage, so most of my involvement with DRI has been in the Insurance Law Committee.

What is your favorite part about being a lawyer?

I enjoy the intellectual stimulation that the job provides. Trying to solve puzzles and problems keeps me interested on a day-to-day basis.

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

I'm a huge and long-suffering sports fan, so when I'm not practicing law I love to go to as many games as I can or watch on tv. Buffalo has a vibrant craft beer scene, and I enjoy spending a night out trying the latest New England IPA. In the summer, which we do have in Buffalo, I enjoy spending weekends on the golf course trying to get my handicap back into the single digits.

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

My first trial was defending an insurer on an uninsured motorist claim where the plaintiff claimed she was involved in a hit-and-run. However, plaintiff's vehicle never was hit by a hit-and-run vehicle, which meant she was not entitled to coverage under the policy. I tried the case, and the jury determined there was no contact between the vehicles and thus no coverage for the plaintiff. It was a very satisfying victory.

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

The most important advice I have received has come from Dan Kohane, a partner at my firm and the head of our practice group. He always says that being a lawyer is all about relationships. I take that to include relationships with clients, the court, opposing counsel, and everyone else you interact with professionally. It is why I strive to do things like get involved with DRI, provide professional courtesies to opposing counsel whenever possible, and act in a friendly, professional, and respectful manner whenever I am representing a client, myself, or my firm.

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

Unfortunately, there have not been many great sporting events involving Buffalo teams in the last 30 years or so, so my answer is Game 3 of the 2016 ALDS between the Blue Jays and Rangers. I think it is safe to say I am one of the biggest Blue Jays fans in the United States, and that game was a thrilling 7-6 win in extra innings to advance to the ALCS. The game ended when Rougned Odor, who Jays fans cannot stand, threw away an inning-ending double play ball, which allowed Josh Donaldson to score the winning run from second. You could feel the building shaking from the noise when he scored.

What was your very first job?

Bussing tables on weekends at a local pancake house. My job duties included clearing tables, making freshly squeezed orange juice, and taking out the trash. The free breakfast food on breaks was nice.

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

Since it's Buffalo, the answer has to involve chicken wings. I would suggest either Gabriel's Gate or Bar Bill Tavern. The atmosphere of the restaurants and surrounding areas are very different. Try both!

Brian Barnas is an associate attorney with Hurwitz & Fine, P.C., located in Buffalo, New York. Mr. Barnas is a member of the firm's insurance coverage practice team and focuses his practice in insurance law and bad faith. He advises insurers on insurance coverage matters involving both first and third party claims and has litigated coverage matters across New York State. Brian graduated from the University at Buffalo Law School in 2015, where he received the CALI Award for Insurance Law and the Robert J. Connelly Award for excellence in trial advocacy.

Membership Minute

March Madness

By Christine L. Stanley



"You miss 100 percent of the shots you don't take." Wayne Gretzky Michael Scott

We are three months into the New Year. Work has piled up, it's dark at 6:00 p.m., you missed a few board meetings and phones calls . . . now is not the best time, for anything. EXCEPT BASKETBALL! (We'll continue to use the metaphor even though NCAA's March Madness has sadly been cancelled.)

You Are Our Point Guard! Yes, YOU

DRI is an international membership organization of all lawyers involved in the defense of civil litigation. Our members serve as an extension of leadership; you are our eyes and ears, and represent our mission all over the world. You host 29 substantive committees, create content and tools, plan CLE seminars and conferences, keep a list of experts AND you know who needs to be on this team.

Identify the Hoop

Who you want to approach: New member in your firm? New lawyer in town? A previous member who forgot to renew? Newly barred attorney? Third-Year Law Student?

Why Shoot It?

DRI continues to be the leading organization for enhancing the skills, effectiveness, and professionalism of defense lawyers, as well as anticipating and addressing issues with and improving the civil justice system. Your goal, as a leader in your community, should be to provide this opportunity to all defense attorneys.

How to Shoot It?

DRI membership, especially early in your career, is a great way to start developing your network and demonstrate your potential for business development to your firm. Any

new recruit who has practiced for less than five years will receive a certificate to attend a substantive seminar free of charge and will also qualify for discounted DRI seminar packages. All other new members receive a CLE credit to use toward registration for any substantive seminar. You'll also earn a \$100 DRI CLE credit for every new member you recruit.

Be Prepared to Get Your Shot Blocked

Timing is everything and it may not be the right time for everyone to join at this very moment, but respect that and continue to follow up and engage with them in other ways—these are still your peers and those relationships still matter.

Shoot It!

You never know who is looking for a great organization like DRI to join or who doesn't even know that such an organization exists, and you'll never know unless you try!

So, go on—SHOOT YOUR SHOT!

Christine Stanley is an attorney in the Lexington, Kentucky office of Quintairos, Prieto, Wood & Boyer. She focuses her practice in the areas of medical malpractice defense and the representation of nursing homes, assisted living facilities and hospitals, and includes general liability and appeals. In addition, her practice encompasses the areas of regulatory and corporate compliance, fraud and abuse, state regulatory matters including certificate of need and licensing. Christine received her Juris Doctor from the University of Kentucky College of Law and Bachelor of Science in Technical Writing for Science and Medicine from Carnegie Mellon University. GO CATS! Christine can be reached at christine.stanley@qpwbllaw.com.

Timeout for Wellness

Making Time for Wellness

By Allison A. Waase



For Christmas this year, Santa hauled a Peloton on his sled and dropped it down our chimney! At least that is how we explained it to our two-year-old daughter when it appeared in our living room right around the holidays following a recent move to the suburbs. We decided to make the investment now that we had extra space, especially since our ability to engage in regular exercise has been more limited as we have had children and expanded our family.

Personally, exercising is a key component to maintaining my emotional, mental, and physical well-being. It is a crucial outlet for me to unload the stresses and anxieties of being a full-time lawyer mom. Even just a twenty-minute sweat session on the bike enables me to be a more patient parent, a more effective advocate for my clients, and a more present spouse. Even on the days I hit the bike before 5:00 a.m. I feel more awake than on the days I hit the snooze button.

Finding the time to squeeze in the workouts is a challenge, and it is why I am often on before the sun (and anyone else in the house!) rises. Having the bike in our home has made it infinitely easier than trying to go out to the gym or to the classes that I really enjoyed before having children. It allows me to take care of my well-being without sacrificing the precious time I have with my kids. Before moving to the suburbs and when we had just one daughter it was easy enough to lace up my sneakers and strap her into our running stroller so that we could both enjoy some time outside in Central Park before the workout started. Although we have a double running

stroller and my husband and I are looking forward to taking the girls out together, it is much more challenging for me to get both girls in, keep them happy, and to push the double jogging stroller on my own. Plus, our younger daughter is still too young to be pushed while running and Mama does enjoy that twenty to thirty minutes of alone time during the stationary bike workout!

Ultimately, investing in the Peloton has given me an opportunity to engage in necessary self-care that enables me to be more centered, in control, happier and healthier. Being a lawyer and a parent is a privilege but it is challenging every day and can easily become overwhelming. To avoid succumbing to the inherent professional pressures we all face, everyone needs an outlet. Certainly self-care does not look the same for everyone. Cycling in the dark while listening to loud music and sweating in the corner of a living room probably sounds like a nightmare for some of you! Regardless, I encourage everyone to consider what works best to maintain your well-being and try to make time for it!

Allison Waase is an associate at Kaufman Borgeest & Ryan LLP focusing in the fields of General Liability, Fire and Explosion, Premises Liability, Products Liability, and Construction and Labor Law. Allison represents clients including building owners, management companies, hotels, business owners, security companies, and trucking companies in all aspects of civil defense.

Seminar Spotlight

Women in the Law Conference 2020

By Kristen W. Durant



“Wherever women gather together, failure is impossible” was printed across the patriotic pins handed out at this year’s Women in the Law conference in Scottsdale, Arizona. The quote from Susan B. Anthony was a great pick

for a women’s conference that took place over the 100th anniversary of the passage of the 19th Amendment, guaranteeing and protecting women’s constitutional right to vote. This was my second year attending the conference, and although I had an incredible experience my first year, I

couldn't help but question, did I just luck out? Had I just managed to meet the most inspiring women at the whole conference during my first go-around? This year's conference answered my question with a resounding "No." This year I made connections with equally as incredible women while also getting to catch up with the women I met in 2019.

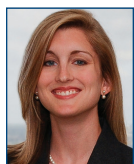
In fact, a connection I made at last year's dine-around event who lives on the other side of the country ran up and exclaimed how beautiful my wedding photos were (seen on Facebook), remembering the details I had shared with her about my recent engagement. We all know this profession is not for the faint of heart and building a network of fellow attorneys to help you grow personally and professionally is vital. This conference serves up the opportunity to make

and foster those relationships on a silver platter. Beyond providing the opportunity to build connections, the conference also provided an array of substantive presentations—ranging from women in the intellectual property world, to an in-house counsel's words of wisdom. I'm thrilled to know my first year at the Women in the Law conference was not a fluke; I will be back!

Kristen W. Durant is a 5th year associate with Van Osdol, PC, based out of Kansas City, Missouri. Her practice consists primarily of products and professional liability, including medical malpractice defense. In her free time, she enjoys playing recreational sports and spending time with her husband and two dogs.

News & Announcements

And the Defense Wins: Megan S. Peterson



Megan S. Peterson, a partner with Simon Peragine Smith & Redfearn, in New Orleans, Louisiana, obtained the grant of summary judgment and dismissal of a case in favor of their client, a retail establishment. The plaintiff alleged that a store employee failed to assist him in lifting a heavy object onto his cart, causing injury and that the store had a duty to so assist him. In presenting the motion, there was little Louisiana caselaw on the issue, and neighboring states had affirmatively determined the issue in favor of defendant-merchants. In this instance, the district court found that Louisiana does not recognize duty on part of a store to assist customers, and granted summary judgment. The decision is among the first in Louisiana to clearly state that a retailer or other merchant is not obligated by law to render assistance to its customers, particularly with lifting or moving merchandise. A copy of the opinion is available online [here](#).

Congratulations to Megan and her firm on a great defense win!

Megan Peterson is a partner at Simon, Peragine, Smith, & Redfearn in New Orleans, Louisiana where she represents a local, regional, and national clients in litigation and alternative dispute resolution. Although she handles a variety of civil litigation matters, her practice focuses on defense of clients in premises liability, retail and hospitality litigation, and trucking and transportation. Megan is licensed in all state and federal courts in Louisiana and Mississippi, and her experience includes favorable defense rulings before both trial and appellate courts. Megan has consistently been selected by Super Lawyers as a Louisiana "Rising Star" in Civil Litigation Defense since 2014.

Have Other Good News to Share?

Have you or one of your fellow young lawyers recently received an honor, a promotion, or a defense win? Do you have any announcements for DRI Young Lawyers? Please contact the Editors, **Darin M. Williams** (dwilliams@laner-muchin.com), **Natalie Baker** (nbaker@mrchouston.com),

Ashlyn Capote (acapote@goldbergsegalla.com), **Carmen Weite** (cweite@friedman-lawyers.com)!