



The Voice of the
Defense Bar™

The Voice

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This Week's Feature



Hunter-Harassment Laws and the U.S. Constitution

By Meredith Donaldson

The act of hunting has been part of human society for nearly three million years. When European explorers settled into North America, game was seemingly limitless; America was a new-found country with bountiful prey ranging from coast to coast. Americans could hunt endlessly without permits, rules, or limitations. It was only when passenger pigeons were hunted to extinction—and the buffalo population nearly eliminated—that people began to take notice of the effects of hunting. As industrial and farming advancements began to flourish, wildlife habitats and huntable land began to disappear, which bred the prospect of overhunting. In the mid-nineteenth century, overhunting led to the development of laws protecting game such as the requirement for hunters to be licensed and the establishment of kill limits.

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Construction Law 101



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DRI Cares

- Exciting Update About the Toiletry Collection for the DRI Cares Public Service Event at the Annual Meeting!
- Doing Great Things for Your Community? Make Sure Your Colleagues Know About It!

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Upcoming Seminars

- DRI Workers' Compensation West Coast Seminar, October 9, 2018
- Asbestos Medicine Seminar, November 8-9, 2018
- Professional Liability Seminar, November 29-30, 2018
- Insurance Coverage and Practice Symposium, November 29-30, 2018

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Upcoming Webinars

- Dumb Things: Eminently Avoidable Legal Ethics Mishaps, September 18, 2018, 1:00-2:00pm CST
- Successfully Managing the Insurer/Employer Relationship, September 26, 2018, 12:00 p.m.-1:00 p.m. CST
- Strategic Discovery in Construction Cases: Framing Effective Inquiries, Furnishing Necessary Responses and Budgeting for Cost Control, September 27, 2018, 12:00 p.m.-1:00 p.m. CST
- Student Loan Best Practices for DRI Members, October 2, 2018, 12:00 p.m.-1:00 p.m. CST

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DRI Membership—Did You Know...

- DRI Dividends: How Many Points Do You Have?

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New Member Spotlight

Jonathan McCoy, Costello Porter Hill Heisterkamp Bushnell & Carpenter LLP



Jonathan McCoy is an attorney at **Costello Porter Hill Heisterkamp Bushnell & Carpenter LLP**, in Rapid City, South Dakota. Licensed in South Dakota and Wyoming and the federal district courts in both states, his primary practice areas include civil, contract, and property litigation and family law.

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Quote of the Week

“One of the worst days in America’s history saw some of the bravest acts in Americans’ history. We’ll always honor the heroes of 9/11.”

—[George W. Bush, 43rd president of the United States](#) (2008).

Legislative Tracking

- Product Liability
- Washington, D.C.

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This Week's Feature

Hunter-Harassment Laws and the U.S. Constitution

By Meredith Donaldson



The act of hunting has been part of human society for nearly three million years. When European explorers settled into North America, game was seemingly limitless; America was a new-found country with bountiful prey ranging from coast to coast. Americans could hunt endlessly without permits, rules, or limitations. It was only when passenger pigeons were hunted to extinction—and the buffalo population nearly eliminated—that people began to take notice of the effects of hunting. As industrial and farming advancements began to flourish, wildlife habitats and huntable land began to disappear, which bred the prospect of overhunting. In the mid-nineteenth century, overhunting led to the development of laws protecting game such as the requirement for hunters to be licensed and the establishment of kill limits.

Hunting is now primarily regulated by state law. One type of hunting-related law in particular has been at the judicial forefront: hunter-harassment laws. Every state has enacted some type of law that seeks to protect the right to hunt lawfully. Hunter-harassment laws typically prohibit intentional interference with a hunt or hunter, the alteration or destruction of hunters' traps, and photography and audiovisual recordings of a hunt. However, these laws have not been welcomed with open arms. The laws against intentionally and physically getting in the way of a hunt seem completely reasonable, but the lines get blurred when the laws start to prohibit citizens from being able to enjoy the same public land as hunters. For instance, some laws have gone as far as to prohibit individuals from being within the visual or physical proximity of a hunter, taking photos or videos of a hunt or hunter, dissuading a hunter from hunting, or even approaching a hunter.

Anti-hunters, conservationists, journalists, and the like have pushed back against such laws, claiming that they unconstitutionally limit freedom of expression. Hunters, on the other hand, proclaim that they are necessary to maintain the legal right to hunt lawfully without interference. So what it really boils down to is having two protected rights pitted against one another. On the one hand, there is the right to hunt lawfully and to enjoy an activity that has withstood the test of time, geography, and the socioeconomic divide. On the other hand, there is the right to access public land to express contrary opinions

and to promote public education on a topic of societal importance. Thus, it's a natural consequence that hunters and those opposed to hunting, or certain hunting practices, have been at tumultuous odds with each other since the birth of hunter-harassment regulations.

It seems as though the only solution to the issue is found in legislation and litigation. Hunter-harassment statutes are typically challenged for being overly broad, vague, and content-based or viewpoint-based restrictions. The Supreme Court has yet to hear a case on the issue, but the issue has been quite prevalent in the lower courts. The Second Circuit got its feet wet on the issue in *Dorman v. Satti*, 862 F.2d 432 (2d. Cir. 1988), in which it held that Connecticut's hunter-harassment statute was unconstitutional for being content based, overbroad, and vague. The court reasoned that it was content based because the purpose of the law was to protect hunters from conduct—verbal or otherwise—by those opposed to hunting. The court further reasoned that the terms “interfere,” “harass,” and “acts in preparation” were vague and overbroad; therefore, the statute was not properly or narrowly tailored enough to escape constitutional infirmity.

Since *Satti*, most subsequent suits have been pursued at the state court level, due to the fact that these cases deal with state laws. The courts have dealt with how state legislative bodies have balanced the rights possessed by each group and have come to surprisingly inconsistent results. In *State v. Lilburn*, the Montana Supreme Court upheld the state's statute as constitutional. 875 P.2d 1036 (Mont. 1994). The Idaho Supreme Court refused to follow Montana's precedent and did the exact opposite by shutting down Idaho's hunter harassment law in *State v. Casey*, 876 P.2d 138, 139 (Idaho 1994). The New Hampshire Supreme Court also struck down its hunter-harassment law in *Opinion of the Justices*, 128 N.H. 46 (N.H. 1986). The Illinois Supreme Court, however, took a more democratic approach in *People v. Sanders*, 696 N.E.2d 1144, 1148 (Ill. 1998). That court found that a portion of the Illinois statute was unconstitutional and severed it to keep the rest of the statute intact. The Minnesota Court of Appeals followed suit in *State v. Miner*, 556 N.W.2d 578 (Minn. Ct. App. 1996).

It is abundantly evident that there is judicial discourse when determining the constitutionality of hunter-ha-

harassment laws, and it's only bound to increase as states begin to amend their statutes to afford hunters even more protection. For instance, Wisconsin amended its hunter-harassment statute in 2016. In relevant part, the amendment now prohibits the following:

7. Engaging in a series of 2 or more acts carried out over time, *however short or long*, that show a continuity of purpose and that are intended to impede or obstruct a person who is engaged in lawful hunting, fishing, or trapping, or an activity associated with lawful hunting, fishing, or trapping, including any of the following:
 - a. Maintaining a visual or physical proximity to the person.
 - b. Approaching or confronting the person.
 - c. Photographing, videotaping, audiotaping, or through other electronic means, monitoring or recording the activities of the person. This subd. 7. c. applies *regardless of where the act occurs*.
 - d. Causing a person to engage in any of the acts described in subd. 7. a. to c.

Wis. Stat. §29.083(2)(a)(7)(a-d). The constitutionality of the Wisconsin amendment is currently being challenged in federal court. The Supreme Court made it clear in *Hurley v. Irish-Am. Gay, Lesbian and Bisexual Grp. of Boston*, 515 U.S. 557, 569 (1995), that photography and audiovisual recordings are forms of First Amendment speech that are entitled to constitutional protection regardless of subject—thus, Wisconsin's amendment provides a clear example of how the legislative bodies are forcing these two protected rights to compete against each other. Hunter-harassment

laws have been fought time and time again for their vague and overbroad language.

These laws fail to put people on proper notice about what they can and cannot do on public land. So instead of having a well-informed public that gets to analyze both sides of the hunting debate, we are left with hunter-harassment statutes that effectually chill the speech of disagreeing parties and citizens who want to educate themselves on hunting practices. These laws hamstring society's ability to discuss this matter of public concern publicly and truthfully. Without the documentation or observation of hunting practices, the public is unable to make informed decisions regarding hunting regulations and laws. Individuals would rather stray far away from public hunting lands for fear of violating hunter-harassment laws than pay exorbitant attorney's fees to argue that such laws violate their First Amendment rights. Whether chilling the speech of disagreeing parties is the intent of these statutes is a question for the courts, but one thing is for sure, it is certainly the impact.

So who gets the kill shot? Hunters? Or the Constitution?

[Meredith Donaldson](#) is an associate at Laffey Leitner & Goode LLC in Milwaukee. She focuses her practice on commercial litigation, franchise dispute litigation, mass tort/toxic tort and animal law. She has been a DRI member since 2018. Among others, she belongs to the DRI Women in the Law Committee.

Member News

Goldberg Segalla's Joseph M. Hannah Receives George W. Thorn Award



The University at Buffalo has honored DRI member [Joseph M. Hanna](#) of Goldberg Segalla LLP with this year's George W. Thorn Award. The award is given every year to a UB alumnus under 40 who has made outstanding contributions to their career fields or academic areas.

Mr. Hanna is the founder and chair of the Goldberg Segalla's Sports and Entertainment Practice Group, chair of the Retail and Hospitality Practice Group, and a partner in the Corporate Services and Commercial Litigation Practice Group. He is nationally recognized for his work in media and entertainment law, as well as for being a leading voice for diversity in the legal and business communities. He is also the founder and president of [Bunkers in Baghdad](#), a nonprofit that collects and sends golf equipment to U.S. soldiers and veterans worldwide to aid in recreation and rehabilitation from injuries. For DRI, Mr. Hanna currently serves as chair of the Center for Law and Public Policy's External Policy Alliance's Committee, and previously served as chair of the 2016 DRI Annual Meeting and as chair of

the DRI Commercial Litigation Committee's Sports Law Specialized Litigation Group.

While a UB student, Mr. Hanna was involved in a variety of organizations, including the Student Bar Association and the Lebanese Student Association. His career as a commercial litigator and legal adviser at Goldberg Segalla began when he was the first associate the law firm ever hired directly out of law school, and he soon became the youngest attorney to be named partner. Among his many achievements, Mr. Hanna was selected as a Law 360 Rising Star in 2014, was the youngest honoree ever to be named Lawyer of the Year by the Bar Association of Erie County in 2015, and was included on the American Bar Association's "On the Rise—Top 40 Young Lawyers" list in 2017.

Since graduating, Mr. Hanna has served on the School of Law Board of Directors, mentored and spoken to hundreds of aspiring law students, and developed the Diversity Clerkship program in collaboration with the School of Law and Minority Bar Association of Western New York to provide minority students with clerkships throughout the region.

DRI joins Goldberg Segalla in congratulating Joe on this tremendous honor!

And The Defense Wins

Keep The Defense Wins Coming!

Please send 250–500 word summaries of your “wins,” including the case name, your firm name, your firm position, city of practice, and e-mail address, in Word format, along with a recent color photo as an attachment (.jpg or .tiff), highest resolution file possible (*minimum* 300 ppi), to DefenseWins@dri.org. Please note that DRI membership is a prerequisite to be listed in “And the Defense Wins,” and it may take several weeks for *The Voice* to publish your win.

Robert Forni



DRI member [Robert Forni](#), a partner at **Ropers Majeski** in San Francisco, recently defeated a motion for attorney’s fees under ERISA before the Ninth Circuit, after the same court reversed judgment in defendants’ favor and remanded plaintiff’s claim for long-term disability benefits to the defendant insurer. In *Cuaresma v. Farmers Group Disability Income Plan and Liberty Life Assurance Company of Boston*, plaintiff filed suit under ERISA to recover LTD benefits, a year after the insurer determined he was ineligible to receive them. Defendants moved for summary judgment on the grounds that plaintiff had failed to exhaust his administrative remedies under the defendant plan before filing suit. In the alternative, they asked the district court to remand plaintiff’s claim to the insurer to review its decision, if the court determined that the insurer had misconstrued the plan, applied a wrong standard, or failed to comply with ERISA. Plaintiff opposed defendants’ motion. The district court found that plaintiff had failed to exhaust the plan’s administrative remedies, and entered judgment in defendants’ favor from which plaintiff appealed to the Ninth Circuit.

The Ninth Circuit reversed judgment, but did not determine that plaintiff was entitled to LTD benefits, or award him attorney’s fees despite his requests. Instead, the court held that the district court erred when it granted summary judgment, because triable issues of fact existed as to whether the insurer denied plaintiff’s claim prematurely. The court therefore remanded the case to the district court, with instructions to remand it to the insurer to re-evaluate the merits of plaintiff’s claim, which neither the district court nor the Ninth Circuit decided.

Plaintiff then moved for “reasonable” attorney’s fees exceeding \$195,000, contending that he had achieved “some degree of success on the merits” under *Hardt v.*

Reliance Standard Life Ins. Co., 560 U.S. 242 (2010) by virtue of the fact that the court had remanded the case to the insurer. Defendants argued that the fee motion was not ripe for adjudication because plaintiff had not obtained the relief sought in his complaint, and he had not succeeded on the merits of his claim in obtaining a remand that he opposed. Additionally, defendants argued the balance of factors set forth in *Hummell v. S.E. Rykoff & Co.*, 634 F.2d 446 (9th Cir.1980) weighed against awarding fees that exceeded the “past due” benefits by a ratio of more than 16 to 1.

In July 2018, the Ninth Circuit denied plaintiff’s motion, holding that it was premature to award fees, despite plaintiff’s procedural victory in obtaining a remand. The court’s decision represents a rare victory for plans and their insurers on a consequential issue of law that remains unsettled since the Supreme Court’s decision in *Hardt*: whether a remand order, without more, constitutes “some success on the merits” sufficient to make a party eligible for attorney’s fees under ERISA. Under the circumstances of this case, in which plaintiff obtained a reversal of summary judgment entered on procedural grounds, the court answered that question, “No.”

Melissa Richardson and Darrin O’Connor



[Melissa Richardson](#) of **Walters Meadows Richardson PLLC** and [Darrin O’Connor](#) of **Porteous Hainkel & Johnson** successfully defended Sindle Trucking, its

driver, Tyrone Kilgore, and its insurer, HDI Gerling America Insurance in a rear-end accident between Mr. Kilgore’s loaded tanker truck and Plaintiff Farrag’s semi. Farrag blew a tire while travelling north on I-55 in Tangipahoa Parish, near Hammond, Louisiana. He testified that he pulled over to the shoulder to check on the tire but returned to the right lane of the roadway because he did not believe it would be safe to remain on the shoulder. After driving at a reduced speed of 35 mph for 20 minutes, and possibly passing at least one exit, he was struck in the rear driver’s side corner of his trailer by Defendant Kilgore as he was attempting to change lanes to avoid Plaintiff’s slow moving semi. Plaintiff contended that, because this was a rear-end accident in which Defendant Kilgore was given a traffic ticket for “careless operation,” Defendant Kilgore was 100 percent at fault. Defendants argued that Plaintiff was totally at fault because, by his testimony, he had 20 min-

And The Defense Wins

utes to avoid this accident by (1) remaining parked on the shoulder and waiting for a service truck; (2) taking one of the exits he likely passed; or (3) calling for an escort. Plaintiff presented Sgt. Pittman and Sal Fariello, both of whom handled various aspects of the accident reconstruction. Defendants relied on expert testimony from Kelly Kennett (biomechanical), Dr. David Curry (human factors and safety), and Larry Baareman (DOT expert). Defendants also retained an accident reconstructionist, Bill Messerschmidt, who ultimately did not testify because favorable testimony was secured from the Plaintiff's two accident reconstructionists on cross examination.

Plaintiff reported no injury to the police and, in fact, did not start treating until two weeks after the accident. He was initially diagnosed with sprains/strains to his neck, low back, and knees. After receiving treatment for about six months in his home state of Tennessee, Plaintiff was cleared to return to work without any restrictions. Plaintiff then hired an attorney from New Orleans, and subsequently began flying from Tennessee to New Orleans for treatment. Plaintiff's attorney referred him to Dr. F. Allen Johnson and Dr. Rand Voorhies. He eventually underwent five surgeries with these two doctors: two knee arthroscopies, neck fusion, low back fusion, and hardware removal. Plaintiff incurred approximately \$510,000 in medical bills.

Testimony from Dr. Shelly Savant, a life care planner, projected Plaintiff's future medical treatment (despite limited testimony of the need for same from both Dr. Johnston and Dr. Voorhies) would cost approximately \$330,000. Defendants called Dr. Ralph Katz, orthopedic surgeon, who examined Plaintiff prior to any surgery, was in agreement with the Tennessee physicians who initially treated Plaintiff and testified that none of the surgeries were causally related to this accident.

The trial began on Monday and the jury was released to deliberate on Saturday afternoon. After approximately an hour and a half, they returned with a decision that split fault equally between the two drivers. \$250,000 was awarded for medical expenses. \$50,000 was awarded for past physical pain and suffering. \$50,000 was awarded for past mental pain and anguish. Plaintiff's total verdict is \$175,000. Plaintiff Farrag's wife, Ms. Hammad, also had a loss of consortium claim, but no damages were awarded.

In January 2017, an offer of judgment was made for \$400,000. Plaintiff's demand at all points prior to trial never came below \$3.2 M. During trial, a demand of \$1.8 M was made. Plaintiffs asked the jury to award between \$2.4-4 million.

2018 DRI Annual Meeting

The First Five Months of the GDPR

What is the **General Data Protection Regulation (GDPR)**? Does it apply to me, my firm or my clients? Register for DRI's Annual Meeting in San Francisco October 17-21, 2018, and hear a panel of international privacy law experts from DRI International on Friday, October 19, 2:30 p.m., to understand how the European Union's 2018 GDPR affects you, your firm, and your clients. Come hear their panel *"The First Five Months of the GDPR: How Corporations Are Coping and Regulators Are Regulating."*

The GDPR applies to anyone who offers goods and services in the EU, or gathers, processes, stores, or uses data on EU citizens. It applies to entities regardless of size, private or public, profit or not for profit. The regulation has been in effect since May 25, 2018, and, although it protects EU residents, it has extraterritorial reach. Fines for noncompliance can be up to four percent of global annual turnover or €20 million. You may think it doesn't apply to you, your firm, your practice, or your clients. Are you sure? Check out these practice areas that are contemplated by the GDPR.

- **Aviation Law**—The modern aviation industry requires the free flow of information across borders. However, the GDPR imposes restrictions upon the movement of EU personal data outside of Europe. The Court of Justice of the European Union has already weighed in on the lawfulness of the exchange of passenger name records between the EU and Canada and is carefully looking at the instruments that are used to move personal data out of Europe. The GDPR imposes many other restrictions on the collection and use of personal data. These restrictions are critical for those in the aviation industry, which is a very "connected" industry—with EU personal data collected for a host of reasons—from enhancing passenger experience to tracking passengers to monitoring pilot performance.
- **Commercial Litigation**—The GDPR is designed to encourage privacy litigation in Europe. The regulation contains pro-plaintiff procedural rules, including the ability of plaintiffs to sue before their home courts (regardless of what the contract says) and to seek damages for nonmaterial harm. The first GDPR cases have already been filed. The GDPR also must be taken into account when implementing legal holds and conducting discovery in connection with U.S. cases when discover-
- able evidence is located in Europe. Lawyers involved in U.S. discovery for litigation in Europe especially need to be aware of the GDPR.
- **Corporate Counsel**—The GDPR impacts virtually every aspect of a business that touches on personal data. Due to the risks involved—fines of up to four percent of total worldwide annual turnover—a previously niche area of the law has made its way into the C-suite and the boardroom. Across industries, companies are implementing GDPR compliance and addressing privacy by design going forward for their businesses.
- **Cybersecurity and Data Privacy**—The GDPR is the most far reaching privacy and data protection law yet adopted. It imposes extensive security and privacy obligations on all businesses that have operations in, or that target, the EU. Given that the EU's data privacy standards have influenced developments around the world—the GDPR was cited as an inspiration for California's new Consumer Privacy Act—it may well become a global standard in the area of data privacy. Privacy regulation, and the GDPR in particular, is likely to be at the heart cybersecurity and data privacy practice for decades to come as enforcement evolves and collective actions emerge.
- **Drug and Medical Device**—Data concerning health is tightly regulated by the GDPR, which restricts the ways such data can be collected and used for research purposes. While digital health devices spread around the world, the GDPR will have a shaping role for the manufacturers who have to incorporate privacy by design into their products. How do biotech and pharma companies collect and use data in Europe?
- **Employment and Labor Law**—Multinational companies often need to process data concerning their employees based outside the United States. The GDPR's stringent rules on the collection, storage, transfer, and other processing of personal data will apply if the data relates to an EU citizen or an EU subsidiary. Significant risks are associated with noncompliance, both in terms of financial sanctions and litigation risks. U.S. companies with employees, or former employees, in the EU must be aware of the GDPR rules for handling their personal data or be exposed to liability.

- **Insurance**—The GDPR is likely to be a source of substantial evolution of the worldwide insurance market. In today's economy, where data is both a key asset and the subject of increasingly complex regulations, insurers are grasping the opportunity to innovate by putting new products on the market, e.g., cybersecurity policies designed with GDPR requirements. Insurers, which collect vast amounts of personal data, including data concerning health, are also grappling with their own data protection obligations under the GDPR. As privacy law evolves around the world, the GDPR likely to become a general data privacy standard.
 - **Intellectual Property Litigation**—GDPR rules may well impact intellectual property litigation and trade secret and other intellectual property protection in the United States because they apply to U.S.-based companies offering goods or services to data subjects in the EU. For example, the GDPR must be considered when conducting discovery in intellectual property cases when the discoverable evidence is located in Europe. Similarly, organizations are entitled to consider their intellectual property rights when responding to data subject access requests (e.g., the GDPR recognizes that the right to access should not adversely affect trade secrets and intellectual property rights).
 - **Law Practice Management/Lawyers' Professionalism and Ethics**—During recent months, many lawyers have spent a lot of time spreading the news and advising their clients about the GDPR. Have you already thought through the ways the GDPR applies to you and your legal practice? U.S.-based law firms, like any companies, are subject to the GDPR as soon as they start providing services in the EU and processing EU personal data. To avoid potential liability under the GDPR and ethics complaints, lawyers in firms that collect EU personal data from their employees, clients, or opposing parties need to understand their obligations under the GDPR to process EU personal data and protect data security in compliance with GDPR principles.
 - **Medical Liability and Healthcare Law**—Under the GDPR, individuals are granted a "Right of Access." This "Right of Access" allows patients to request full disclosure of their medical files and related information concerning the processing of personal data that is contained in their medical files. In addition, the GDPR sets out special restrictions for processing personal data which reveal information relating to the past, current or future physical or mental health status of an individual. These additional restrictions increase the risk of noncompliance with the GDPR.
 - **Product Liability**—Personal data is processed through IoT products such as smartphones, smart cars, and fitness trackers. The processing of EU personal data through these products implicates the GDPR. If such processing does not meet the GDPR requirements, for example due to non-GDPR compliant product design (e.g., a product with inadequate security), manufacturers and sellers of these products could face substantial damages claims as well as public fines.
 - **Professional Liability**—Professionals with clients or customers in the European Union are expected to know their obligations under the GDPR and to comply with the GDPR as well. The GDPR requires compliance with myriad challenging obligations, including some that are familiar (e.g., maintaining appropriate technical and organisational measures to protect the personal data of the clients / customers against unauthorized access) and some that may not be (e.g., responding to a broad variety of data subject requests, such as the right to erasure and the right to data portability) In case of noncompliance, professionals face in particular a risk of damages claims and public fines.
 - **Retail and Hospitality**—Industries that thrive on knowing clients'/customers' wishes and preferences offer a number of practices that must be reassessed and potentially reworked to ensure GDPR compliance in connection with the processing of personal data from EU clients/customers. Processes requiring such assessment include detailed profiling of clients/customers; long-term retention of guest information in databases; and email marketing initiatives.
- Come join us in San Francisco at DRI's Annual Meeting on October 19, 2018, to hear more about the GDPR! [Register here.](#)
- We urge you to consult the white paper on the GDPR authored by DRI's Center for Law and Public Policy, titled *"What Is GDPR? If You And Your Clients Are Still Asking That On May 25, 2018, You May Have a Serious Problem."* It's free, and available [here](#). As a service to DRI's 20,000 members, the guide also includes a practical and detailed how-to-get-started GDPR checklist for users. You may also

DRI News

with to consult [The Effect of the GDPR on American and Canadian Business: Why We Need to Care, For The Defense](#), May 2018, pp. 32–43, by Sanderson, Bortnick, Vollweiler, and Wrynn.

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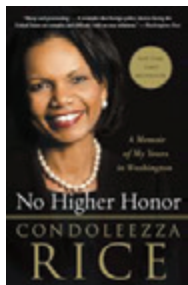
Ninth Annual Silent Auction Benefiting the NFJE



The DRI Philanthropic Activities Committee is pleased to announce the Ninth Annual Silent Auction benefiting the [National Foundation for Judicial Excellence \(NFJE\)](#) will be held October 18, 2017 at The Village (969 Market Street) in conjunction with the DRI [Annual Meeting in San Francisco](#). This year's event will be an evening filled with fellowship, entertainment, and fabulous silent auction items.

New this year, get ready to bid on amazing items from the convenience of your smart phone via BidPal. Please visit our [online auction website](#) to register and check out the outstanding variety of auction items. This year bids will only be made through BidPal. You can start bidding now and can bid even if you cannot attend the Annual Meeting.

Each week until the Annual Meeting we will feature some of our top items in the Silent Auction & Raffle. This week's featured items:



***Signed Copy of
No Higher Honor
by Condoleezza Rice***

South African Photo Safari for Two, Donated by Zulu Nyala Game Lodge



South African photo safari for two guests to enjoy six night's full board and lodging, including two guided game viewing activities per day.

iPad Pro 10.5 Inch Screen 64 GB with Wi-Fi



No matter the task, the new iPad Pro is up to it—and then some. It offers far more power than most PC laptops, yet is delightfully simple to use. The redesigned Retina display is as stunning to look at as it is to touch. And it all comes together with iOS, the world's most advanced mobile operating system. iPad Pro. Everything you want modern computing to be. Now even, well, better.

DRI News

For The Defense Digital Edition App, September Issue Now Available

This serves as a quick reminder that *For The Defense* magazine is now available to the DRI membership in **both** digital and print formats. Here are just a few of the featured advantages that make *FTD* digital edition your “go to” DRI publication:

- Electronic magazine delivered via email to **all** members
- No need for a password to access
- Easily share content with colleagues and clients via email and social media
- The ability to make, save, and share electronic notes on articles
- A powerful search tool, including the ability to search current and past issues

- 24/7/365 availability
- Better exposure for authors and advertisers

In addition, members can now access the *FTD* digital edition App through [Google Play](#) or the [App Store](#) on their mobile device. Simply click on either link to install the App now. Not only can members view *FTD* digital edition at their fingertips 24 hours, 7 days a week, the App allows for several content-sharing options, the ability to share specific articles, and easy, immediate access to DRI's supporting advertisers.

[Click here](#) to access the September issue of *FTD* digital edition.

Now Available: DRI Women in the Law Tool Kit for SLDOs

DRI's **Women in the Law Committee** recently completed production on its *DRI Women in the Law Tool Kit: A Resource for State and Local Defense Organizations*. Please visit the **DRI Committees** page at <https://www.dri.org/committees/> and click on **Women in the Law** then look for the blue **Women in the Law Tool Kit** button to access the document in its entirety.

Don't Forget to Check Out What's New with DRI Circles



DRI member lawyer-to-lawyer connections have become even easier and even more valuable. The DRI Circles App allows members to connect with each other by establishing personal networks or “circles.” Through DRI Circles, you can create networks based on practice area, geographic region, shared interests, etc. The DRI Circles app allows you to send messages, set up meetings, refer and track business, references and more on your mobile device. Join DRI Circles today or update your app to get even more out of your membership.

Take a look at some of the recently added valuable benefits available through the DRI Circles App:

- Added chat functionality within a business referral
- Added functionality to broadcast a message within a group

- Increased circles limit to 250 participants
- Videoconferencing

Important Note: *If you are already utilizing the DRI Circles app, you will need to delete the current version and download the newest version to take advantage of these newly added features. Upon downloading the updated version, you will be notified of any future enhancements via Apple or Google.*



<https://itunes.apple.com/us/app/dri-circles/id1292016061?mt=8>



https://play.google.com/store/apps/details?id=com.dri.circles&hl=en_US

DRI News

Don't Miss Out on DRI LegalPoint™

LegalPoint™ LegalPoint™ (formerly DRI Online) is a members-only service providing DRI members with exclusive access to a vast online library of DRI articles, books and materials. DRI members can search thousands of documents and filter them by practice area and resource. LegalPoint™ includes content from:

- *For The Defense*
- *In-House Defense Quarterly*
- Committee Newsletters
- Defense Library Series (DLS)—NEW!
- Seminar Materials
- DRI Defense Wins Reporter

In addition to searching all of DRI's LegalPoint™ content, you can also access Defense Library Series (DLS) books separately and review the table of contents and individual chapters. If you have not yet accessed LegalPoint, please [click here](#) to view a brief video and find out what you are missing.

Leverage the expertise of leading defense practitioners and find the on-point articles and resources you need with LegalPoint™. Visit <https://www.dri.org/legal-resources> for more information.

Pay Off Your Student Loans Faster through Laurel Road

After spending years in law school, the last thing you need is the burden of high-interest student loan payments following you for years down the road.

Lowering your interest rate with Laurel Road is easy. Through its student-loan refinancing benefit offered through DRI, Laurel Road offers a seamless online experience with real rates and clear terms.

Lowering your interest rate with Laurel Road is easy. Through its student-loan refinancing benefit offered through DRI, Laurel Road offers a seamless online experience with real rates and clear terms.

Plus, as a DRI member, you can refinance your student loans now and get a 0.25% rate discount!

[Check your rate](#) now and start saving today!

DRI Cares

Exciting Update About the Toiletry Collection for the DRI Cares Public Service Event at the Annual Meeting!

The excitement is palpable for the upcoming public service event at the Annual Meeting! DRI is partnering with Compass Family Services to collect much-needed toiletries for the homeless in the Bay Area. We are well on our way to reaching our goal, but we still have critical items that we need to collect. Please consider helping us with this important project by purchasing these items through one of the links below or sending your donations to **Marie Holvick (Attn: DRI Cares) at Gordon & Rees LLP, 275 Battery St, Ste 2000, San Francisco, CA 94111.**

Here are the key items that we need more of (need to get 1,000 of each):

- Conditioner
- Body wash
- Deodorant

In addition to getting 1,000 of these key items, we want to reach our goal of 20,000 total items donated to Compass! We are close!

[Amazon Smiles Wish List](#)

<http://www.alltravelsizes.com>

<https://www.cheaptravelsizes.com>

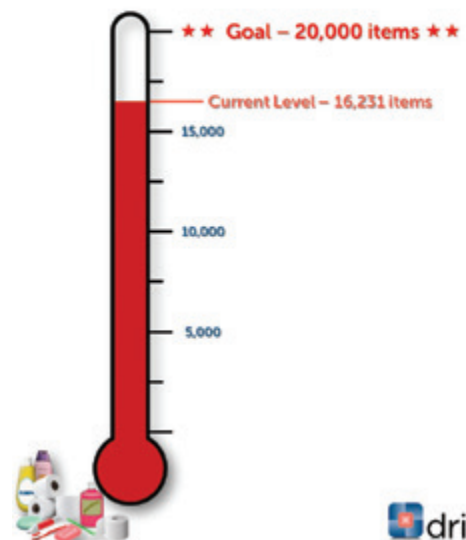
<https://www.dollartree.com>

<https://www.minimus.biz>

<http://www.traveltoiletrykits.com>

<https://weinersltd.com>

DRI Cares Toiletry Drive



Doing Great Things for Your Community? Make Sure Your Colleagues Know About It!

DRI members are some of the most generous people around. Individuals, companies, firms, and groups donate time and resources to helping our communities through various philanthropic events. We want to make sure that your fellow DRI members know about your good work! Each week in *The Voice* the Philanthropic Activities Committee publicizes the wonderful work being done by our members. Make sure that we know about your event! If you are interested in publicizing an event, please email Jay Ludlam at DRI at jludlam@dri.org and copy Rebecca Nickelson at Rebecca.Nickelson@heplerbroom.com. Let us hear from you!





Upcoming Seminars

DRI Workers' Compensation West Coast Seminar, October 9, 2018

	Workers' Compensation West Coast Seminar
	
Tuesday October 9, 2018 San Diego, CA REGISTER TODAY	

Are you ready for in-depth analysis of current legal trends and hot issues that will challenge the way you defend workers' compensation claims? If so, the DRI Workers' Compensation West Coast Seminar is the event you cannot afford to miss! This exclusive event will focus on issues of interest for the West Coast workers' compensation stakeholders. The one-day program in advance of Comp Laude® will offer guidance for claims professionals, including Risk Managers, claims adjusters and employers, as well as workers' compensation attorneys, on emotional intelligence in the world of workers' compensation litigation, current ethical issues and considerations, and discussions on latest developments as to what constitutes a "working day" or "normal business day" for calculating timelines for all things important involving defense of workers' compensation claims. [Click here](#) to view the brochure and register for the program.

Asbestos Medicine Seminar, November 8-9, 2018

	Asbestos Medicine Seminar
	
November 8-9, 2018 Austin, TX REGISTER TODAY	

Pack your boots and two-step south by southwest to Austin for DRI's 2018 Asbestos Medicine Seminar! This seminar brings together the finest litigators with the top experts in medicine and science to provide an insightful and interactive event. With presentations on the latest in asbestos and talc litigation and the application of knowledge to case work-up, this seminar is a must for practitioners of all levels. No trip to the "live music capital of the world" would be complete without mixing songwriting talent with litigation skills. Attendees will enjoy lively networking receptions, where business development is the name of the game. You'll depart with invaluable information to keep you at the forefront of asbestos and talc defense. [Click here](#) to view the brochure and register for the program.

Professional Liability Seminar, November 29-30, 2018

	Professional Liability Seminar
	
November 29-30, 2018 New York, NY REGISTER TODAY	

The 2018 DRI Professional Liability Seminar will provide you with the tools to defend any professional successfully in our current legal climate. With presentations by the most prominent and experienced professional liability lawyers, experts, and insurance professionals in the country, this year's seminar will again provide attendees with the most up-to-date information regarding new issues, defenses, and strategies. Through the insight, tools, and skills that you will gain at this seminar, we hope to build on DRI's renowned foundation of success by putting you at the forefront of establishing efficient and creative ways to defend the modern professional. [Click here](#) to view the brochure and register for the program.

Insurance Coverage and Practice Symposium, November 29-30, 2018

	Insurance Coverage and Practice Symposium
	
November 29-30, 2018 New York, NY SAVE THE DATE	

The DRI Insurance Coverage and Practice Symposium is the foremost educational event for insurance executives, claims professionals, and outside counsel who specialize in insurance coverage. This year's symposium will once again offer an unparalleled opportunity to engage with a distinguished faculty of insurance industry leaders, experts, and coverage lawyers on emerging issues, recent court rulings, national trends, and the future of insurance coverage law. In addition, the symposium will provide exceptional networking events, as well as an opportunity to experience the wonder of New York City during the holiday season! [Click here](#) to view the brochure and register for the program.

Upcoming Webinars

Dumb Things: Eminently Avoidable Legal Ethics Mishaps, September 18, 2018, 1:00–2:00pm CST



The presentation will cover various examples of dumb things that lawyers do and explain how firms can avoid obvious mistakes arising from unthinking action or inaction (the low-hanging fruit of risk avoidance). [Click here](#) to learn more and register for the webinar.

Successfully Managing the Insurer/Employer Relationship, September 26, 2018, 12:00 p.m.–1:00 p.m. CST



Employers and their insurers (and other third-party vendors) typically work together in a harmonious fashion to provide a broad range of employee benefits to employees. However, there are numerous traps for the unwary in managing the employer-insurer relationship, particularly with the increased regulatory and compliance demands on employers and insurers. It makes sense for the parties to spend time at the front end to set expectations properly and understand the needs of the employer. In doing so, potential conflicts around the following topics can be avoided or minimized at claim time. [Click here](#) to learn more and register for the webinar.

Strategic Discovery in Construction Cases: Framing Effective Inquiries, Furnishing Necessary Responses and Budgeting for Cost Control, September 27, 2018, 12:00 p.m.–1:00 p.m. CST



This webinar will explore the most effective ways to develop a discovery strategy for construction cases. We will identify the primary project witnesses, facts and data; how to draft effective interrogatories and document requests with a focus on key events and milestones during projects; constructing a meaningful electronically stored information protocol for the exchange of email and other digital records; and concerns for preserving privileged communications. We will also compare discovery strategies depending on whether the dispute is in arbitration or courts of law. The advent of digital record keeping has dramatically increased the burden of discovery in litigation. Parties to disputes and their counsel need to evaluate the scope of discovery early in a dispute and to create a discovery budget and plan for success. The presenter has drawn upon decades of investigation experiences to apply his best evaluative practices to the rapidly changing digital age. [Click here](#) to learn more and register for the webinar.

Student Loan Best Practices for DRI Members, October 2, 2018, 12:00 p.m.–1:00 p.m. CST



The webinar will cover all student debt repayment options that are available to DRI members, including the exclusive student loan refinancing program being offered by Laurel Road. There is no one size fits all approach to student loan repayment, and this online presentation will delve into the considerations surrounding each option. [Click here](#) to learn more and register for the webinar.

DRI Membership—Did You Know...

DRI Dividends: How Many Points Do You Have?

Did you know...?

We believe rewards should come through action, not discussion

The DRI Dividends program rewards all DRI members. You can earn dividends from the following membership activities (including, but not limited to):

- Length of **years** as a member;
- **Attending** a meeting;
- **Recruiting** a member;
- **Writing** an article;
- **Speaking** at an event;

- **Joining** a substantive law or standing committee;
- **Participation** in a DRI philanthropic activity.

Check your DRI Rewards **balance** by logging on to the DRI website:

- Click on **MY DRI**.
- Click on the **DRI Dividends** tab to view the pie chart member activity and points.
- Click on How to Earn Points and **Reward Tiers** for program details.

Thank you for being a DRI member!

FACT: Benefits can't work if you don't use them.

New Member Spotlight

Jonathan McCoy, Costello Porter Hill Heisterkamp Bushnell & Carpenter LLP



Jonathan McCoy is an attorney at **Costello Porter Hill Heisterkamp Bushnell & Carpenter LLP**, in Rapid City, South Dakota. Licensed in South Dakota and Wyoming and the federal district courts in both states, his primary practice areas include civil, contract, and property litigation and family law.

Before pursuing a legal career, Mr. McCoy served eight years in the U.S. Air Force, earning his navigator wings and flying the B-1 bomber. After successfully achieving his goals, he left the Air Force and attended law school at the University of Wyoming.

Mr. McCoy is married and has two wonderful children. He and his wife homeschool their children and in his free time, he can be found taking in a baseball game or playing with his kids.

Mr. McCoy also serves as a board member of Love INC of the Black Hills, a nonprofit organization that seeks to break the cycle of poverty in the lives of people in Rapid City and the Black Hills.

Quote of the Week

"One of the worst days in America's history saw some of the bravest acts in Americans' history. We'll always honor the heroes of 9/11."

—[George W. Bush, 43rd president of the United States](#) (2008).

Legislative Tracking

Product Liability

Contributor
Simona B. Popova
Golden & Grimes LLP
Miami, Florida

H.R. 701, enacting the Security and Privacy in Your Car Study Act (SPY Car Study Act) of 2017

- Requires the National Highway Traffic Safety Administration to conduct a study to determine and recommend standards for the regulation of the cybersecurity of motor vehicles manufactured or imported for sale in the United States. That study shall identify the following:
 - (1) isolation measures that are necessary to separate critical software systems that can affect the driver's control of the movement of the vehicle from other software systems;
 - (2) measures that are necessary to detect and prevent or minimize anomalous codes in vehicle software systems associated with malicious behavior;
 - (3) techniques that are necessary to detect and prevent, discourage, or mitigate intrusions into vehicle software systems and other cybersecurity risks in motor vehicles;
 - (4) best practices to secure driving data about a vehicle's status or about the owner, lessee, driver, or passenger of a vehicle that is collected by the electronic systems of motor vehicles; and
 - (5) a timeline for implementing systems and software that reflect such measures, techniques, and best practice.
- 01/24/17 – introduced in House
- 01/24/17 – referred to the House Committee on Energy and Commerce
- 01/31/17 – sponsor introductory remarks on measure (CR H757)

H.R. 736, enacting the Black Box Privacy Protection Act

- Amends the Automobile Information Disclosure Act to require manufacturers of new automobiles to disclose on the information label affixed to the window of the automobile: (1) the presence and location of an event data recorder (commonly referred to as a “black box”), (2) the type of information recorded and how such information is recorded, and (3) that the recording may be used in a law enforcement proceeding
- Sets forth similar requirements for motorcycle manufacturers
- Prohibits the manufacture, sale, offering for sale, or import into the United States of an automobile manufactured after 2015 (bearing a model year of 2016 or later) that is equipped with an event data recorder, unless the consumer can control the recording of information
- Establishes liability to the U.S. government for violators of the above prohibition for a civil penalty of up to \$5,000 for each violation with a maximum penalty of \$35 million for a related series of violations
- Allows the treatment of certain violations as unfair or deceptive acts or practices under the Federal Trade Commission Act
- 01/30/17 – introduced in House
- 01/30/17 – referred to the House Committee on Energy and Commerce
- 02/03/17 – referred to the Subcommittee on Digital Commerce and Consumer Protection

H.R. 906, enacting the Furthering Asbestos Claim Transparency (FACT) Act

- Amends federal bankruptcy law to establish disclosure requirements with respect to a trust that is formed under a reorganization plan, following the discharge in bankruptcy of a debtor corporation, for the purpose of assuming the debtor's liability regarding certain legal claims related to liability exposure
- Such a trust must file with the bankruptcy court quarterly reports available on the public docket. That describe each demand the trust has received from a claimant and the basis for any payment made to that claimant. These reports shall not include any confidential medical records or the claimant's full social security number
- Upon written request, and subject to payment of reasonable cost, a trust must provide information related to payment from, and demands for payment from, the trust to any party to an action concerning liability for asbestos exposure
- Related to H.R. 985, Fairness in Class Action Litigation and Furthering Asbestos Claim Transparency Act of 2017
- 02/07/17 – introduced in House
- 02/07/17 – referred to the house Committee on the Judiciary
- 02/07/17 – referred to the Subcommittee on Regulatory Reform, Commercial And Antitrust Law
- 02/15/17 – considered and marked up by committee
- 02/15/17 – ordered to be reported by the Yeas and Nays: 19-11
- 02/24/17 – reported by the Committee on the Judiciary (H. Rpt. 115-18)
- 02/24/17 – placed on the Union Calendar, Calendar No. 6

H.R. 1118, enacting the Innocent Sellers Fairness Act

- Prevents undue disruption of interstate commerce by limiting civil actions brought against persons whose only role with regard to a product in the stream of commerce is as a lawful seller of the product
- Exempts a seller from liability for personal injury, monetary loss, or damage to property arising out of an accident or transaction involving such product, unless the claimant proves one or more of the following activities by the seller:
 - (1) The seller was the manufacturer of the product.
 - (2) The seller participated in the design of the product.
 - (3) The seller participated in the installation of the product.
 - (4) The seller altered, modified, or expressly warranted the product in a manner not authorized by the manufacturer.
 - (5) The seller had actual knowledge of the defect in the product as a result of a recall from the manufacturer or government entity authorized to make such recall or actual inspection at the time the seller sold the product to the claimant.
 - (6) The seller had actual knowledge of the defect in the product at the time the seller supplied the product.
 - (7) The seller intentionally altered or modified a product warranty, warning or instruction from the manufacturer in a way not authorized by the manufacturer.
 - (8) The seller knowingly made a false representation about an aspect of the product not authorized by the manufacturer.
- Limits the liability of the seller in cases of negligence to the personal injury, monetary loss, or damage to property, directly caused by one or more activity listed above
- 02/16/17 – introduced in House
- 02/16/17 – referred to the House Committee on the Judiciary
- 02/16/17 – referred to the House Committee on Energy and Commerce

- 02/17/17 – referred to the Subcommittee on Digital Commerce and Consumer Protection
- 03/06/17 – referred to the Subcommittee on the Constitution and Civil Justice

H.R. 1215, enacting the Protecting Access to Care Act of 2017

- Establishes provisions governing healthcare lawsuits where coverage for the care was provided or subsidized by the federal government
- Exempts healthcare providers, who prescribe or dispense pursuant to a prescription a medical product approved, licensed or cleared by the Food and Drug Administration, from being named as a party to a product liability lawsuit involving such a product and bars liability of such healthcare providers in a class action lawsuit against the manufacturer, distributor, or seller of products approved, licensed or cleared by the Food and Drug Administration
- Does not affect any Federal rule of law applicable to a civil action brought for a vaccine-related injury or death
- Shall not be deemed to affect any defense to a defendant in a health care lawsuit or action under any other provision of Federal law
- Relates to H.R. 1704
- 02/24/17 – introduced in House
- 02/24/17 – referred to the House Judiciary Committee
- 02/24/17 – referred to the House Energy and Commerce Committee
- 02/24/17 – referred to the Subcommittee on the Constitution and Civil Justice
- 02/28/17 – markup by the House Judiciary Committee
- 02/28/17 – ordered to be reported by the Yeas and Nays: 18 - 17
- 03/03/17 – referred to the Subcommittee on Health
- 03/22/17 – reported (amended) by the Committee on Judiciary
- 03/22/17 – discharged by the Committee on Energy and Commerce
- 03/22/17 – placed on the Union Calendar, Calendar No. 31
- 6/13/17 – Rules Committee Resolution H. Res. 382 reported to House. Rule provides for consideration of H.R. 1215 with one (1) hour of general debate
- 06/28/17 – Amendments offered by Mr. Sessions (A001, A002)
- 06/28/17 – Amendment offered by Mr. Roe (TN) (A003)
- 06/28/17 – Amendment offered by Mr. Hudson (A004)
- 06/28/17 – Amendment offered by Mr. Barr (A005)
- 6/28/17 – on passage Passed by recorded vote: 218 – 210
- 6/29/17 – received in the Senate and read twice and referred to the Committee on the Judiciary

H.R. 1526 / S. 631, enacting the Drone Aircraft Privacy and Transparency Act of 2017

- Establishes federal standards for informing the public and protecting individual privacy with respect to unmanned aircraft systems
- Amends the FAA Modernization and Reform Act of 2012 to provide guidance and limitations regarding the integration of unmanned aircraft systems into United States airspace, and for other purposes

- Provides for private right of action to enjoin the violation and/or recover damages for up to \$1,000 per unintentional violation
- 03/13/17 – introduced in House
- 03/13/17 – referred to the Committee on Transportation and Infrastructure
- 03/13/17 – referred to Committee on Energy and Commerce
- 03/14/17 – referred to the Subcommittee on Aviation
- 03/15/17 – introduced in Senate
- 03/17/17 – referred to the Subcommittee on Digital Commerce and Consumer Protection

H.R. 1704, enacting the Accessible Care by Curbing Excessive Lawsuits Act of 2017

- Establishes reasonable, comprehensive, and effective health care liability reforms designed to:
 - (1) improve the availability of health care services where health care liability actions are a factor in decreased availability of services;
 - (2) reduce the incidence of “defensive medicine”;
 - (3) ensure that persons with meritorious health care claims receive fair and adequate compensation, including reasonable noneconomic damages;
 - (4) improve the fairness and cost-effectiveness of the current system by reducing the uncertainty in the amount of compensation provided to injured individuals; and
 - (5) provide an increasing sharing of information which will reduce unintended injury and improve patient care.
- Does not affect the application of the Federal rule of law established in Title XXI of the Public Health Service Act for a vaccine-related injury or death
- Relates to H.R. 1215
- 03/23/17 – introduced in House
- 03/23/17 – referred to the Committee on the Judiciary
- 03/23/17 – referred to the Committee on Energy and Commerce
- 03/24/17 – referred to the Subcommittee on Health
- 04/06/17 – referred to the Subcommittee on the Constitution and Civil Justice

H.R. 1879 / S. 812, enacting the Promoting Automotive Repair, Trade, and Sales Act (PARTS Act) of 2017

- Declares that it is not an act of infringement, with respect to a design patent that claims a component part of a motor vehicle as originally manufactured to:
 - (1) make, test or offer to sell within, or import into, the United States any article of manufacture that is similar or the same in appearance to the component part claimed in such design patent if the purpose of such article is for repair of a motor vehicle to restore its appearance as originally manufactured; or
 - (2) use or sell within the United States any such same or similar articles for such restorations more than 30 months after the claimed component part is first offered for public sale as part of a motor vehicle in any country.
- Applies to any patent issued, or application filed before, on, or after the effective date of this bill
- Relates to S. 812
- 04/04/17 – introduced in Senate

- 04/04/17 – introduced in House
- 04/04/17 – referred to the House Committee on the Judiciary
- 04/26/17 – referred to the Subcommittee on Courts, Intellectual Property and the Internet

H.R. 2930, enacting the Drone Innovation Act of 2017

- Develops a civil unmanned aircraft policy framework
- Establishes a pilot program under which the Secretary of Transportation shall provide State, local, or Tribal governments with technical assistance in regulating the operation of small and civil unmanned aircraft systems.
- 06/16/17 – introduced in House
- 06/16/17 – referred to the House Committee on Transportation and Infrastructure
- 06/17/17 – referred to the Subcommittee on Aviation

H.R. 3388, enacting the Designating Each Car's Automation Level (the DECAL Act) or The Self Drive Act

- Memorializes the Federal role in ensuring the safety of highly automated vehicles as it relates to design, construction, and performance, by encouraging the testing and deployment of such vehicles
- Establishes a Highly Automated Vehicle Advisory Council in the National Highway Traffic Safety Administration by the Secretary of Transportation
- Requires the Department of Transportation (DOT) to:
 - complete research to determine the most cost effective method and terminology for informing consumers about the capabilities and limitations of each highly automated vehicle or each vehicle that performs partial driving automation; and
 - determine whether such information includes terminology as defined by SAE International in Recommended Practice Report J3016 (published September 2016) or alternative terminology
- Cannot be preempted by State law
- Relates to H.R. 3405 MORE Act
- Relates to H.R. 3406 PAVE Act
- Relates to H.R. 3408 EXEMPT Act
- Relates to H.R. 3412 LEAD'R Act
- Relates to H.R. 3413 ACCESS Act
- Relates to H.R. 3421 NORM Act
- Relates to H.R. 3430 SHARES Act
- Relates to H.R. 3401, 3404, 3407, 3411, 3414, 3416
- 07/25/17 – introduced in House
- 07/25/17 – referred to the House Committee on Energy and Commerce
- 07/27/17 – committee consideration and mark-up session held
- 07/27/17 – ordered to be reported by the Yeas and Nays: 54:0
- 09/05/17 – placed on the Union Calendar, Calendar No. 12
- 09/06/17 – Mr. Latta moved to suspend the rules and pass the bill, as amended

- 09/06/17 – passed/agreed to in House: on motion to suspend the rules and pass the bill, as amended Agreed to by voice vote
- 09/07/17 – received in the Senate and read twice and referred to the Committee on Commerce, Science, and Transportation

H.R. 3412, enacting the Let NHTSA Enforce Automated Vehicle Driving Regulations Act (LEAD’R Act) Act

- Amends section 30103 of Title 49, United States Code
- Establishes sole authority for the NHTSA over the regulation of highly automated vehicles
- Provides for federal preemption of state laws regulating highly automated vehicles and automated driving systems (or components of such systems). A state may not enact a law in this area unless such law is identical to federal standards.
- Relates to H.R. 3388, SELF DRIVE Act
- 07/26/17 – introduced in House
- 07/26/17 – referred to the House Committee on Energy and Commerce
- 07/28/17 – referred to Subcommittee on Digital Commerce and Consumer Protection

H.R. 3568, enacting the Black Box Privacy Protection Act

- Requires manufacturers to disclose to consumers the presence of event data recorders, or “black boxes”, on new automobiles, motorcycles, and autocycles, and to require manufacturers to provide the consumer with the option to enable and disable such devices on future automobiles, motorcycles, and autocycles
- Relates to H.R. 736, Black Box Privacy Protection Act
- 07/28/17 – introduced in House
- 07/28/17 – referred to the House Committee on Energy and Commerce
- 08/04/17 – referred to the Subcommittee on Digital Commerce and Consumer Protection

H.R. 4050 / S. 1225, enacting the Vehicle Innovation Act of 2017

- Authorizes appropriations to the Department of Energy (“DOE”) for research, development, engineering, demonstration, and commercial application of vehicles and related technologies for FY 2018 – FY 2022.
- Develops United States technologies and practices that:
 - (1) improve the fuel efficiency and emissions of all vehicles produced in the United States; and
 - (2) reduce vehicle reliance on petroleum-based fuels.
- Supports domestic research, development, engineering, and manufacturing of advanced vehicles, engines, and components to enable vehicles to move larger volumes of goods and more passengers with less energy and emissions
- Allows for greater consumer choice of vehicle technologies and fuels
- Shortens technology development and integration cycles in the vehicle industry
- Relates to S. 1416, Energy and Natural Resources Act of 2017
- 05/24/17 – introduced in Senate, read twice and referred to the Committee on Energy and Natural Resources
- 10/12/17 – introduced in House
- 10/12/17 – referred to the Committee on Science, Space, and Technology, and to the Committee on Energy and Commerce

- 10/13/17 – referred to the Subcommittee on Digital Commerce and Consumer Protection
- 5/22/18 – referred to the Subcommittee on Energy

H.R. 4964, enacting the Children’s Product Warning Label Act of 2018

- Amends the Federal Food, Drug, and Cosmetic Act to require that children’s cosmetics containing talc include an appropriate warning unless the cosmetics are demonstrated to be asbestos-free.
- 02/07/18 – introduced in House
- 02/07/18 – referred to the house Committee on Energy and Commerce
- 02/09/18 – referred to the Subcommittee on Health

Washington, D.C.

Contributor
Madelaine Kramer
Sands Anderson PC
McLean, Virginia

Employment and Labor Law

B22-0913, relating to wages for tipped workers

- To repeal Initiative 77 – Minimum Wage Amendment Act of 2018
- 07/09/18 – introduced at Office of the Secretary
- 07/10/18 – referred to committee of the whole
- 09/17/18 – public hearing

Toxic Torts and Environmental Law/Retail and Hospitality

B22-0902, relating to straws and stirrers

- To prohibit the sale, use or provision of non-compostable straws and stirring implements
- 07/10/18 – introduced at committee of the whole and referred to committee on transportation and the environment and committee on business and economic development

Toxic Torts and Environmental Law

B22-0234, relating to prohibition on sale or use of gasoline-powered leaf blowers

- To prohibit the sale, offer for sale, or use of gasoline-powered leaf blowers in the District
- 04/04/17 – introduced at legislative meeting and referred to committee of the whole
- 07/02/18 – public hearing

Retail and Hospitality

B22-0623, relating to funeral services and consumer protections

- To establish a “funeral bill of rights” and identify certain violations of District regulations governing the practice of funeral directors as unlawful trade practices
- 12/05/17 – introduced at Office of the Secretary
- 12/19/17 – referred to committee on business and economic development

B22-0537, relating to the District’s regulation of alcoholic beverages

- To make numerous technical and substantive amendments to operation, sales, service and consumption of alcoholic beverages during the 2018 All-Star Game and the World Cup Tournament
- 10/25/17 – introduced at Office of the Secretary and referred to committee on business and economic development
- 11/07/17 – referred to committee on business and economic development
- 02/07/18 – public hearing
- 06/06/18 – committee report filed

Medical Liability and Health Care Law

B22-0784, relating to regulation of practice of midwifery

- To establish a board of certified midwives to regulate the practice of midwifery in DC
- 04/10/18 – introduced at legislative meeting and referred to committee on health
- 06/22/18 – public hearing

B22-0742, relating to mental health record disclosures

- To permit the disclosure of mental health information by third-party payors to healthcare providers in certain instances
- 03/06/18 – introduced at legislative meeting and referred to committee on health
- 06/22/18 – public hearing

B22-0744, relating to the practice of optometrists

- To permit optometrists to prescribe certain analgesics included in Schedule II through V controlled substances
- 03/08/17 – introduced at Office of the Secretary
- 03/20/18 – referred to committee on health
- 07/11/18 – public hearing

Construction Law

B22-0683, relating to substandard construction and abutting properties

- To require violators of certain code provisions who damage adjoining or abutting property be ordered to repair the damage or pay restitution to the property owner

- 02/06/18 – introduced at legislative meeting and referred to the committee of the whole
- 07/12/18 – public hearing

B22-0616, relating to residential metering

- To require every residential unit in a new residential building to be individually metered for electric, natural gas and water utility service received by the unit
- 12/05/17 – introduced at legislative meeting and referred to committee on business and economic development

Government Enforcement and Corporate Compliance

B22-0587, relating to the protection of consumers from price gouging and public emergencies

- To expand the scope of existing consumer price-gouging protections from natural disasters to any public emergency and to extend the duration of a declared state of emergency from 30 to 60 calendar days
- 11/07/17 – introduced at Office of the Secretary
- 11/21/17 – referred to committee of the whole with comments from the committee on judiciary and public safety

Law Practice Management

B22-0324, relating to the District's notary public system and notary laws

- To update and modernize the District's current notary laws and align the District with best practices across the country
- 06/05/17 – introduced at Office of the Secretary and referred to committee on government operations
- 10/24/17 – public hearing scheduled
- 12/12/17 – public hearing scheduled
- 12/20/17 – public hearing
- 07/03/18 – committee report filed