



The Voice of the
Defense Bar™

The Voice

February 26, 2020

Volume 19, Issue 8

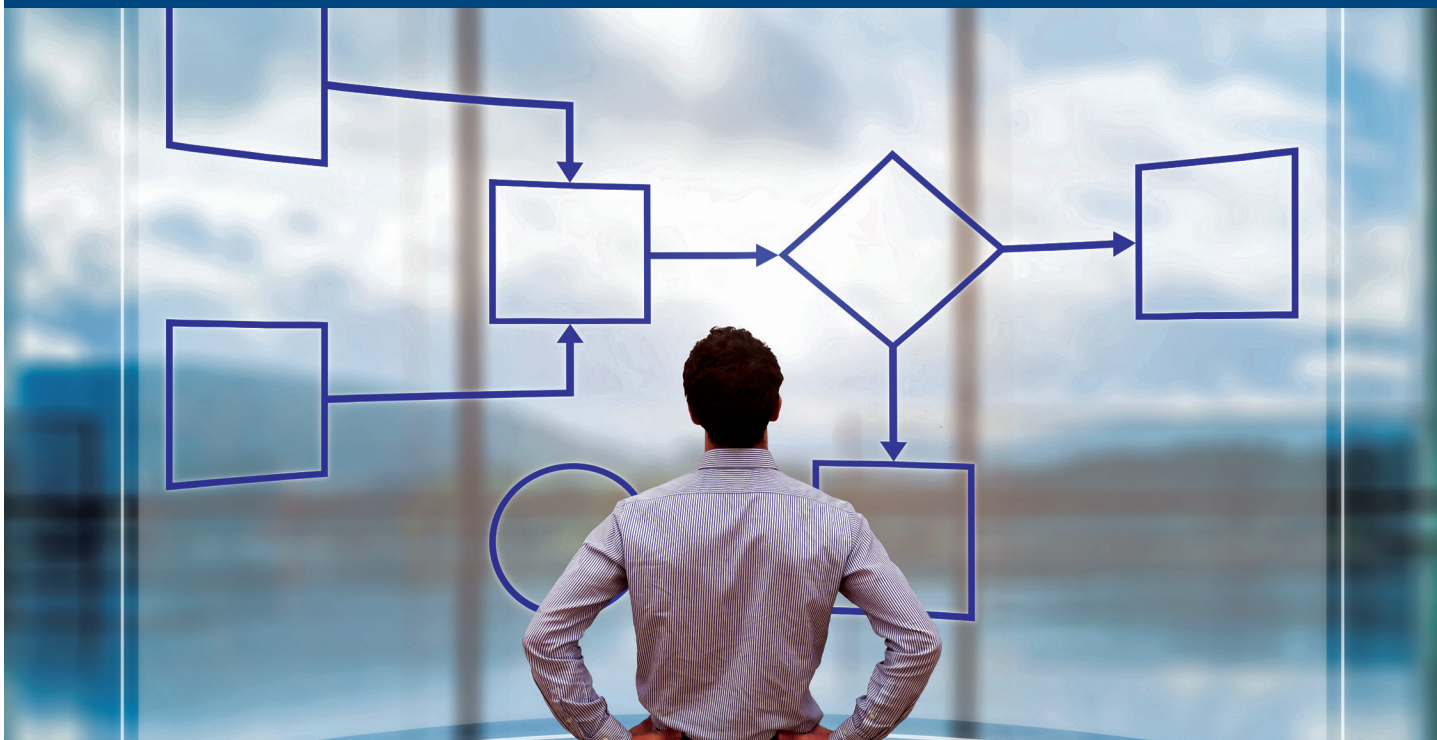
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This Week's Feature



Focus on Processes, Not Outcomes

By Jeremy W. Richter

In a radio interview on *The Paul Finebaum Show* in May 2019, Nick Saban was talking about his players' mindsets after individual and team success, and the importance of focusing on processes instead of results: "When you start focusing on outcomes, it's sort of a distraction, because you really need to focus on what you need to do to get the outcome." Past outcomes are not indicative of future results unless they are built on a foundation of trustworthy processes.

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- The Ghost of Treatment Past: Phantom Medical Bills, Medical Litigation Funding, and How to Fight Them, March 5, 2020, 12:00 pm–1:00 pm CST
- “What the Heck Is Going On?”: The Evolution of the Nuclear Verdict, April 10, 2020, 12:00–1:30 pm CST
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DRI Membership—Did You Know...

- DRI Dividends: How Much Have You Earned? Start Spending Now!

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 Insurance Coverage and Claims Institute



April 1-3, 2020
Chicago

REGISTER TODAY

 Construction Law Seminar



April 2-3, 2020
Chicago

REGISTER TODAY

State Membership Chair/State Representative Spotlight

- Tennessee

Hannah Lowe, Senior Associate, Trammell Adkins & Ward PC

Catherine “Cate” C. Dugan, Partner, Peterson White LLP

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New Member Spotlight

Jamie Humphreys, Cooley LLP

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Quote of the Week

“What good is the warmth of summer, without the cold of winter to give it sweetness.”

—[John Steinbeck](#) (b. Feb. 27, 1902), *Travels with Charley: In Search of America*.

This Week's Feature

Focus on Processes, Not Outcomes

By Jeremy W. Richter



In a radio interview on *The Paul Finebaum Show* in May 2019, Nick Saban was talking about his players' mindsets after individual and team success, and the importance of focusing on processes instead of results:

"When you start focusing on outcomes, it's sort of a distraction, because you really need to focus on what you need to do to get the outcome." Past outcomes are not indicative of future results unless they are built on a foundation of trustworthy processes.

Don't Be Misled by Focusing on Results

My basement was kind of a disaster. Boxes haphazardly strewn about. Tools and equipment that I had not organized in the last 20 months, despite the best of intentions. Kids' toys that they had played with and discarded. A pile of things to take to the landfill. So after months of trying not to notice the mess, I picked up and organized the basement. Now I have a tidy basement.

But if I just focus on the result that now I have a clean and well-organized basement, I will turn around in a few months to discover that it has devolved to its chaotic state again. Right now, I am a guy who just has a tidy basement in this moment. I haven't put the processes in place to be the kind of guy who keeps his basement in good shape.

Focusing on the results instead of the processes can be misleading. You can manufacture a good result or have the good fortune to luck into a positive outcome. But if you don't install the systems and habits that allow for consistency, no particular outcome will reveal the true state of affairs.

What are your processes for handling clients? For managing cases? For attending to your practice? Put systems in place to ensure that you are being consistent month after month. This consistency will enable you to audit your processes to see if there are any gaps or if you need to tinker with something.

Maintaining spreadsheets is a part of my process for being organized and staying on top of my caseload. When I go a few weeks without updating the spreadsheets that reflect the status of my cases or upcoming trial settings, I feel disorganized and fraught that something may fall

through the cracks. The other problem with failing to keep up with my processes is how long it takes to catch up. It is far more efficient to keep up rather than catch up. Once your processes are in place, maintain them. Otherwise, they're not your processes; they're just a way that you spent a few hours organizing some information that one time.

Processes Drive Consistency

If you want to sustain a successful practice that spans decades, you need consistent results. Nothing can deliver consistent results like maintaining the processes that got you there in the first place.

In discussing the upcoming season in August 2018, New England Patriots head coach Bill Belichick said, "We've just got to keep stringing days together. Take advantage of our opportunities to go out there and improve and trust the process." Matt Johnson, *Bill Belichick Drops 'Trust the Process' Line During Presser*, MSN.COM ([Aug. 3, 2018](#)).

That's what we have to do: string days together in which we are implementing the processes that we've put in place and evaluating them for the possibility of improvement. On his first day on the job in 2013, former GM of the Philadelphia 76ers Sam Hinkie said: "We talk a lot about process—not outcome—and trying to consistently take all the best information you can and consistently make good decisions. Sometimes they work and sometimes they don't, but you reevaluate them all." Max Rappaport, *The Definitive History of "Trust the Process,"* Bleacher Report ([Aug. 23, 2017](#)). Six years later, although he's no longer with the team, the processes that he put in place have put the 76ers on the cusp of great success.

Entrepreneur Lizzie Davey recommends that we do one thing, however small it may be, every day to move our businesses forward. Maybe it's as simple as updating your firm's social media sites or soliciting a review from a client. Davey contends, "If you're consistently performing one task every day with the future of your business in mind, you'll be moving your business forward 30 steps each month." [Lizzie Davey, Level Up Your Business](#).

Marketing, caseload management, meeting your billable goals—whatever area of your practice you consider—there

are systems that you can develop to help you deliver consistent results over time. No individual result will be indicative of whether your systems are working. Only a long-term vision and observation of your results provide you with the information to assess whether your processes are effective or need revision.

But if you don't have processes and you're just flitting from one trendy method of doing things to another, you can never expect consistency. You won't know what is or is not working, because you will not have allowed yourself to have enough information to evaluate the source of your successes or failures before moving on to the next thing.

What can you do each day to give yourself the greatest likelihood of success? First, put processes in place to manage your cases and practice. Spreadsheets work really well for me, but you have to do what works for you. Second, be consistent in implementing and working with your processes. Third, after time, evaluate your results (whether that's how a case ultimately resolved or just that you're regularly getting discovery in or out promptly) to

evaluate whether your processes are working for you. Fourth, modify your processes as needed. Lastly, persist. Being process oriented, rather than results driven, will lead to consistent outcomes over time.

[Jeremy W. Richter](#) is a shareholder with **Webster Henry** in Birmingham, Alabama. His civil defense practice focuses on general business liability, transportation litigation, and federal Black Lung claims. He is the author of *Building a Better Law Practice*, *Stop Putting Out Fires*, and *Level Up Your Law Practice*. He also writes about litigation and law practice management topics at jeremywrighter.com. Mr. Richter is the DRI Law Practice Management Committee publications chair.

This article is an excerpt from Mr. Richter's forthcoming book, *Level Up Your Law Practice: The Ultimate Guide to Being a Successful Lawyer*.

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.

John M. Johnson and Ben Willson



DRI members and **Lightfoot Franklin & White LLC** partner [Johnny Johnson](#) and associate [Ben Willson](#) successfully

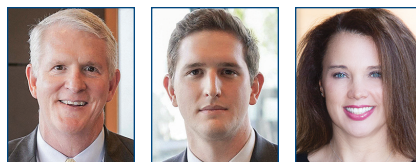
petitioned the Alabama Supreme Court for a writ of mandamus directing the trial court to dismiss Dow AgroSciences LLC (DAS) from a case in Conecuh County, Alabama, alleging defective cottonseeds. (*In re: Andalusia Farmers Cooperative v. Robert Ward*, No. CV-16-003 (Conecuh Circuit Court)). In its 8–0 ruling, the court found that DAS had been improperly joined to a dispute between a cotton grower and his local farmers cooperative. *Ex parte Dow AgroSciences LLC*, No. 1180887, 2020 WL 401593 (Ala. Jan. 24, 2020).

The cooperative sued the grower to collect money owed for cottonseed that was sold and delivered. The grower countersued the cooperative for fraud, and then joined DAS to the action, claiming that the cottonseed that he purchased from the cooperative was defective. The trial court had permitted the grower to join DAS to the suit, even though the statute of limitations had run.

The Lightfoot team petitioned the Alabama Supreme Court to issue a writ mandating that the trial court dismiss

the claim against DAS. In doing so, they overcame the high burden associated with petitions for mandamus and prevailed in their arguments that the plain meaning of the statute in question supported the company’s dismissal and that its petition was the only adequate remedy.

John Floyd Sr., John Floyd Jr., and Mandi Karvis



Defense attorneys and DRI members [John Floyd Sr.](#), [John Floyd Jr.](#), and [Mandi Karvis](#), of **Wicker**

Smith O’Hara McCoy & Ford PA, achieved a defense win on February 5, 2020, in *Zamanian v. Jones, DC*, a Tennessee case. Ms. Karvis is a partner in the firm’s Phoenix, Arizona, office and Mr. Floyd Jr. and Mr. Floyd Sr. are partners in the firm’s Nashville, Tennessee, office.

On September 6, 2016, the plaintiff was involved in a car accident and sustained injuries. Approximately two weeks later, she sought treatment from a Nashville chiropractor. She received a one-hour massage on her second visit. During the massage, she alleged that the chiropractor fondled her breast and buttocks and subsequently filed a lawsuit against him, alleging claims of healthcare liability, informed consent, and state law discrimination. The chiropractor denied the allegations and the case went to trial.

The defense presented proof that the plaintiff had given numerous, sworn inconsistent statements about the incident. Additionally, the defense was able to receive a directed verdict on all claims. However, the court allowed the case to proceed to the jury on a theory of medical battery. After a three-day jury trial, the jury found in favor of the chiropractor on all claims.

DRI News

DRI Neutrals Database Soon to Include Canadian ADR Professionals

DRI's long-time ADR partner, the **National Academy of Distinguished Neutrals** (NADN), is currently surveying Canadian litigators to identify the most widely acceptable civil mediators and arbitrators across the country. "We hope to have the charter list of between 100 and 150 of the most established and well-respected Canadian

neutrals finalized by May, and we'll incorporate all these new bios and calendars into the free [DRI Neutrals Database](#) resource," explained Darren Lee, Executive Director of NADN. "Our team is generally reaching out to lawyers by phone, so we'd be grateful for the input of any DRI members who are 'north of the border.'"

DRI Podcast: *A Conversation With...*

DRI encourages you to listen to its podcast [A Conversation With...](#), where each week Frank Ramos converses with one of our members about the practice, legal trends, and the issues and challenges we face as defense counsel. So far there have been 47 podcasts, which you can download

wherever you download your podcasts. If you want to be a guest, email Frank at framos@cspalaw.com.

So far, Frank has spoken with:

Philipp Behrendt	Richard Moore	Philip Willman	Rebecca A. Nickelson, Melissa K. Roeder, and Lana Alcorn Olson
Carmen R. Toledo	Lisa L. Boswell	Diane Pumphrey	
L. Pepper Cossar	Ross B. Hofherr	Zachary Adams	Traci McKee
Diane Fleming Averell	Rosary A. Hernandez	Thomas Hurney	Don Myles
Baxter D. Drennon	Michael McGrory	Sara Turner	Craig A. Thompson
David MacMain	Harold Adkins	Thomas F. Segalla	Craig A. Marvinney
Henry M. Sneath	Tiffany Alexander	Andrew Bolin	Catherine Ava Kopiec
Nicholas C. Pappas	R. Matthew Cairns	Douglas K. Burrell	Ana Ramos
Stan Graham	Toyja Kelley	John E. Cuttino	Casey C. Stansbury
John Trimble	John Owens	Joe Ankus	Tim Pratt
Thomas Feher	Scott Creamer	John F. Kuppens	Alison R. Christian
Guy Hughes	Amy Sherry Fischer	Stacy Moon	Marisa A. Trasatti

DRI Young Lawyers Subcommittee Compiling State Legislative Reports

The DRI Young Lawyers Legislative Liaison Subcommittee conducts a project to compile regularly updated reports on state legislation affecting the defense bar. The reports will be by state and further subdivided by legislative topic, e.g., aviation, toxic torts, drug and medical device, and so forth. Having this information will be enormously useful to DRI members.

The goal is to cover all 50 states and the compilation is a fairly easy process. However, the subcommittee needs volunteers to help with the gathering. If you are able to cover your state, please contact subcommittee chair David Vaughn (Dvaughn@bjpc.com).

DRI Cares

MDLA Supports Women's Shelter

In connection with their annual meeting, held January 31, 2020, members of the **Mississippi Defense Lawyers Association** (MDLA) brought donations of toiletry items and paper goods. Along with the monetary donations received, they were able to pack 100 toiletry bags with a minimum of 10 items each, such as toothbrushes, toothpaste, bars of soap, combs, razors, washcloths, shampoo, conditioner, lotions, lip balm, and tissue packets. MDLA members were honored to include a handwritten note of encouragement

in each bag. The items were delivered February 5 to [Matt's House Shelter for Women](#) in Jackson, Mississippi.

Matt's House provides shelter for homeless women who have no other place to go. For over 300 guests a year, Matt's House offers a safe, nurturing environment, while staff assists residents in finding housing, employment, or transportation back to their families. The residents receive an evening meal and a light breakfast in addition to a safe place to sleep for the night.



DRI Cares



Upcoming Seminars

Construction Law Seminar, April 2–3, 2020



Join us at DRI's 2020 Construction Law Seminar for education and relationship building that will prepare you for 2020 and beyond! Earn up to 12 hours, including 1 hour of ethics credit, by attending interactive sessions about the challenges and opportunities within the construction industry. Learn how the industry is preparing for, insuring against, and responding to cyber risks; current MBE/WBE contracting issues; how climate change affects building design and claims; and more. Register online by March 3 to save \$100. [Click here](#) to view the brochure and to register for the program.

Trucking Law Seminar, April 30–May 1, 2020



DRI's Trucking Law Seminar is a one-of-a-kind event for trucking lawyers and industry personnel. Help humanize the trucking industry by participating in sessions led by Chris Spear, president of the American Trucking Association; Jim Mullen, general counsel for the Federal Motor Carrier Safety Administration; and other subject-matter experts. This seminar will set the standard for how trucking companies and their drivers are perceived in the future. Register online by April 1 for the best rate. [Click here](#) to view the brochure and to register for the program.

Drug and Medical Device Seminar, May 6–8, 2020



Join us at DRI's Drug and Medical Device Seminar, May 6–8 at the Boston Marriott Copley Place. This continues to be the go-to event for in-house and outside counsel to the pharmaceutical and medical device industry. Participate in group discussions, educational breakouts, and networking events with colleagues, clients, and potential clients! Learn about trends in drug and device litigation; emerging technologies in patient care; ethical challenges with social media; and more. Register online by April 6 to save \$100. [Click here](#) to view the brochure and to register for the program.

Upcoming Seminars

Business Litigation Super Conference, May 13–15, 2020



Registration is open for DRI's Business Litigation Seminar. This seminar will take place May 13–15 at the Marriott City Center Hotel in Minneapolis. If you're an in-house counsel, judge, or trial attorney, this event was created just for you. Attend cutting-edge and timely presentations in the areas of cybersecurity/data breach, class actions, and government enforcement/corporate compliance. Plus, enjoy exclusive events outside the classroom to build relationships and grow your network. Register online by April 14 to save \$100. [Click here](#) to register for the program.

Intellectual Property Litigation, May 13, 2020



DRI's 2020 Intellectual Property Litigation Seminar, May 13–15 in Minneapolis, offers an unprecedented opportunity to network with and learn from industry counsel and pre-eminent attorneys. Hear perspectives on copyright, trademark, and patent litigation from judges, in-house counsel, experts, and litigators. Attendees will benefit from the unique focus on litigation in the intellectual property space that sets this seminar apart from all others. Register online by April 14 to save \$100. [Click here](#) to register for the program.

Upcoming Webinars

Avoiding Hidden Catastrophes—The Healthcare Professional as a Witness, March 3, 2020, 12:00 pm–1:00 pm CST



Despite significant differences in personalities and emotional expression among healthcare professionals, physician and nursing witnesses are repeatedly dealt with in a universal manner when preparing for depositions in medical malpractice cases, resulting in ineffective, and often damaging, testimony. Among physicians, two primary personalities can be identified, while nursing staff can similarly be broken down into distinct personalities. Individual healthcare personalities must be identified and uniquely addressed early on, from both a cognitive and emotional perspective, to avoid destructive testimony that will unnecessarily increase both the value and exposure of the case. [Click here](#) to register.

The Ghost of Treatment Past: Phantom Medical Bills, Medical Litigation Funding, and How to Fight Them, March 5, 2020, 12:00 pm–1:00 pm CST



Attendees of this webinar will hear from two seasoned trucking attorneys and an experienced medical billing professional with an extensive background in analyzing medical billing procedures and determining the reasonable value of medical services regarding medical funding used in personal injury and trucking litigation. Specifically, attendees will hear about the different types of medical funding models (doctors who self-finance, factoring, medical funding companies, among others); discovery tactics that can be used by defense lawyers to obtain relevant and critical medical funding information; and a case law overview addressing the relevance of medical funding discovery and the admissibility of medical funding information at trial. Additionally, attendees will learn examples of questionable billing practices (i.e., overcharging, upcoding, unbundling) and how billing experts can be used to help defense attorneys analyze whether the medical expenses incurred by a plaintiff were reasonable. [Click here](#) to register.

“What the Heck Is Going On?”: The Evolution of the Nuclear Verdict, April 10, 2020, 12:00–1:30 pm CST



Defense attorneys across the nation are being bombarded with calls from their clients asking, “What the heck is going on with these crazy verdicts?” The emergence of the nuclear verdict is currently the hottest topic of discussion in civil litigation for both the plaintiffs’ and defense bars. There are several factors to blame, including (1) juror psychosocial factors, (2) growing litigation funding for plaintiff attorneys, (3) slow development of young defense attorneys, (4) political influences, (5) growth of reptile tactics, (6) distrust of corporations, and (7) generational factors. This program will outline the influence of these factors on nuclear verdicts and provide practical solutions to avoid nuclear fallout for defendants. [Click here](#) to register.

Juror Confirmation Bias: Powerful, Perilous, Preventable, April 28, 2020, 12:00–1:00 CST



Over the course of a civil trial, jurors are presented with several pieces of information. At the conclusion of the attorney presentations, counsel place their client’s case in the hands of jurors and have faith that the jurors will objectively view all of the evidence. However, this is far from what happens in the deliberation room. Instead, jurors often “cherry-pick” the information that supports their preconceived attitudes and beliefs. This webinar will explain why jurors fall victim to such behavior and how this decision-making process can be perilous to a client’s case. [Click here](#) to register.

DRI Membership—Did You Know...

DRI Dividends: How Much Have You Earned? Start Spending Now!

Who doesn't love finding money in a coat or jean pocket? Have you checked your DRI member dashboard lately? There's some unfound treasure there for you now.

Thousands of active DRI members have earned DRI Dividend Points, which are just like money in the bank. How so? You accrue Dividend Points and redeem them for a reward for yourself.

How many points have you earned? [Log into your DRI account](#) and click on the orange tab for "My DRI." Next, click on "DRI Dividends," and you can view the number of points that you have earned so far.

Did you know that you accumulate Dividend Points year after year by simply being a DRI member and using your benefits? You earn points by

- leading a substantive law committee or standing committee;
- attending a DRI seminar, the Annual Summit, or a regional meeting;

- recruiting a member;
- speaking at a DRI program or writing an article for *For The Defense*, *In-House Defense Quarterly*, or a newsletter;
- being a DRI member in good standing for five years or more; or
- participating in a DRI public service project at a DRI event.

What do you with your Dividend Points? Well that's up to you: keep saving or start spending!

[Click on this link to view the Reward Tiers.](#) Contact DRI Customer Service (312) 795-1101 when you are ready to redeem your points.

We know that your DRI membership is an investment and that's why DRI pays you dividends!

State Membership Chair/State Representative Spotlight

Tennessee

State Membership Chair

Hannah Lowe, Senior Associate, Trammell Adkins & Ward PC



Areas of Practice: Insurance defense, insurance coverage, civil defense litigation, and insurance coverage litigation.

DRI member since 2015.

Hannah's experience with DRI: "I have been a member of the DRI Young Lawyers Committee and have assisted with planning "Happy Hours" in Tennessee to promote DRI and the Tennessee Defense Lawyers Association (TDLA). I have attended DRI Young Lawyers Seminars in Nashville and Las Vegas. I'm also a board member of the TDLA and helped to launch the Young Lawyers section of TDLA."

Fun Fact: "I am originally from England but have lived in Tennessee for 15 years. I love living in Knoxville because of the proximity to the Great Smoky Mountains National Park."

State Representative

Catherine "Cate" C. Dugan, Partner, Peterson White LLP



Areas of Practice: Workers' compensation defense.

DRI member since 2008.

Cate's experience with DRI: "I joined DRI 12 years ago, after I was appointed to a board position with the Tennessee Defense Lawyers' Association. Since then, I have attended several DRI Annual Meetings and seminars and have become active with the DRI Workers' Compensation Committee. I am grateful for the opportunities DRI provides to collaborate and network with other state defense bar leaders at our national and regional leadership meetings!"

Fun Fact: "During law school, I was a contestant on *Who Wants to Be a Millionaire?*"

New Member Spotlight

Jamie Humphreys, Cooley LLP



Jamie Humphreys is a litigation and regulatory associate in **Cooley's** litigation department in London. He qualified in 2008 and is admitted as a solicitor in England and Wales.

He is a strategic advisor to clients who face critical threats to their business at all stages of the product life cycle, working with them to ensure the most favorable outcome and manage any reputational effect.

Mr. Humphreys also provides policy advice to clients on proposed legislation and regulations that may introduce profound changes to their business. He has acted on

high-profile litigation across a range of different industries, internal investigations into allegations of fraud by global products manufacturers, major corruption investigations for governments, and B2B product liability disputes, international recalls, and consumer claims for well-known global brands. He is passionate about the effect that new technologies such as 3D printing, AI, and the Internet of Things will have in the products space and works with clients to ensure that they prosper within a dynamic regulatory environment.

Quote of the Week

"What good is the warmth of summer, without the cold of winter to give it sweetness."

—**John Steinbeck** (b. Feb. 27, 1902), *Travels with Charley: In Search of America*.