

The Association Press

WINTER 2010 VOL. 17 NO. 2

IN THIS ISSUE

PRESIDENT'S REPORT TO MEMBERS ...	1
INTERNET & TECHNOLOGY COMMITTEE	3
HAWAII 2011	3
NEW ORLEANS 2012	4
MEMBERSHIP REPORT	4
NEW MEMBERS.....	4
IADC UPDATE.....	7
NATIONAL ISSUES REPORT	7
A WORD FROM LOU	9
ABOUT OUR MEMBERS.....	10
WHAT'S NEW IN MY STATE	10
RUMORS, GOSSIP AND INNUENDO	12
NO DOUBT IN THE ADTA WE PREFER TO REFER	12
BOOK REVIEW.....	13
OTHER MISCELLANEOUS NEWS	14
MEMBERSHIP COMMITTEE LIST	14
MEMBERSHIP NOMINATION FORM	16

PRESIDENT'S REPORT TO MEMBERS

FRANCISCO J. COLÓN-PAGÁN - PR



My tenure as president has been quite interesting and challenging. Shortly after assuming the duties I proceeded to the appointment of the chairs and members of the different committees. Thanks to all who answered the call and have accepted the challenges of their tasks.

The Executive Director Position

In June I received an email from Peggy Schultz, our Executive Director, to notify me that she was resigning. Although surprised by the news, I immediately appointed a committee to search for her replacement, which consisted of the three past presidents that had searched for and recommended her appointment. The committee selected four prospects which were then interviewed by George Walker, Steve Heine and I in Chicago over a two-day period. When we could not reach a unanimous decision, I asked Peggy to stay on board until after the Annual Meeting was over. After discussing an additional compensation, she agreed to stay until May 31, 2011. This matter was then submitted to the Executive Council via electronic voting and was unanimously approved.

The Executive Council met this month in San Francisco to discuss, among other issues, who would replace Peggy. During the meeting we learned that Peggy was willing to reconsider her departure. Pursuant to the Council's unanimous mandate, I met with Peggy and successfully negotiated a compensation package. As a result, she will continue to be ADTA's Executive Director for at least the next three years.

ADTA's Ambassador Roles

One of the vital roles that our officers perform is to be ambassadors before other organizations. This summer we were kept busy in this role. Last June I attended the DRI Insurance Roundtable which was held in Chicago. Past Presidents Kevin Kelly, Bob Tait and I attended the DRI's Spring Meeting, which was also held in June in Costa Rica. In addition, President Elect George Walker and I attended the Annual Meetings of the International Association of Defense Counsel & Federation of Defense & Corporate Counsel which were respectively held in Barcelona, Spain, and Munich, Germany. George Walker was at the American Civil Law Roundtable that was held in Williamsburg, Virginia, last August. Bob, George and I were guests at the Annual Meeting of the International Association of Claims Professionals, (formerly the Excess & Surplus Claims Association) which took place in Amelia Island, Florida, at the end of September. Finally, Bob, George and I attended the DRI Annual Meeting held in San Diego, California last month.

"Dutch-Treat" Dinner

As many know, an ADTA tradition began several years ago in which the members who attend the DRI Annual Meeting can gather for an ADTA "Dutch-Treat" Dinner. It is an evening of fun and camaraderie, hosted by the president elect, and this year was no different. Over forty of us, including spouses, gathered for dinner at Salvatore's, a magnificent Italian restaurant near the hotel. We all had a great time. Spe-

cial thanks George and Peggy for planning the gathering, and to Bob Harrison and John Clifford, our local members, for having recommended this superb restaurant. Next year the DRI Annual Meeting will be held in Washington, D.C. Be sure to make plans to attend.

Relationships with Sister Organizations

The relationships with the sister organizations continue to be strong. There is a very close feeling of fellowship among all the officers of the sister organizations. We have discussed issues of common interest and have agreed to work on the first two that have been discussed. For example, when the issue of preemption was initially discussed during the IADC meeting, a committee was formed with two representatives from each organization, spearheaded by DRI, to further study the issue and then work on articles for publication. However, this issue has fizzled out somewhat because the American Bar Association adopted a watered down version of the one originally communicated by its President in a letter. At the recent DRI meeting, another issue of common interest was brought up to the officers of the sister organizations. This one has to do with a rule proposed by the Financial Accounting Standard Board ("FASB") to require disclosure of additional information from lawyers that may jeopardize the attorney client privilege. Since then, we have learned that the FASB has retracted the proposal, thus mooting the issue for the time being. (Editor's Note: For a more detailed discussion of these issues, see the "National Issues Report" article.)

During the meeting of the American Civil Law Roundtable held in Williamsburg, a resolution in support of adequate funding for state courts was presented and passed. Under the Roundtable rules, the resolution cannot be finally adopted until it has been unanimously approved by all the members. The proposed resolution was approved by the Executive Council during an electronic meeting held in September, and by the DRI Board of Directors during its October meeting.

Our friend and new ADTA member Michael Weston of Iowa was elected as DRI's Second Vice President. Mike is now on the path to be the DRI President in three years. He will be a great president. Our warmest congratulations to Mike and his family for this well deserved recognition.

Finally, I drafted an article for Declarations, the IACP's publication. It is entitled The First Decade: A Rough Start to the 21st Century. If anyone is interested in a copy, let me know and I will gladly email it to you.

Finances

The ADTA finances are acceptable but need to be improved. Although the Boston meeting ended with a surplus, and we have enough resources to meet foreseeable expenses during the rest of the year, our annual dues are insufficient to meet the expenses. We have not increased dues since 2006, yet the expenses continue to increase. The end result is that we currently operate at a deficit. As a matter of fact, we have had a deficit for the last three years. During its recent meeting, the Executive Council approved a dues increase by \$125 for prime members and by \$100 for associate members effective November 5, 2010. This will only cover the current operating deficit. In a recent ADTA Talk message I incorrectly reported that the dues increase

had been \$100 for primes and associates. When this was brought to my attention I checked my notes and corroborated with the Treasurer and Secretary that the approved increase was as reported herein. My apologies for the inaccurate information previously reported.

To this date, ADTA has worked without a budget. The fact that we have survived this long without budgets is no indication of a good business practice. We need accurate budgets and financial statements that compare how we perform against the budget and against the income and expenses of prior years. Hopefully, we will have a budget in place for next year.

Membership

Our membership numbers continue to hold steady. We are working hard to delete from the database the names of members who have not timely paid their annual dues. Also, the Membership, New Generation and Diversity Committees continue to work hard in their efforts to recruit new members. For ADTA to succeed as a viable organization in which we refer business to each other, we need to maintain a strong membership base.

Annual Meetings

Bill Staples continues to work diligently to insure we have a successful meeting in Hawaii. The word is spreading and many members I have spoken with will be in attendance. There is a lot of enthusiasm for this meeting, and this should boost attendance.

The planning for the Annual Meetings in New Orleans in 2012 and Greenbrier in 2013 are also going strong. More information on these events will follow in my next message.

Cost Saving Measures

ADTA has implemented several cost saving measures. For example, we eliminated the expense to produce the Handbook, which annually cost around \$6,500 to \$7,000. It is now accessible via the Internet and the members can download it at their leisure. The Annual Meeting Speakers' Handout was sent via email to the Annual Meeting attendees, at a cost saving measure of about \$1,000. Finally, the Claims Directory is under study. Updates are done manually, which is a "no-no" in today's digital age, because it is not connected to our database. This may require the use of a different printer, one that is Microsoft based.

Website

The website is working fine now but will need to be improved, and the backend structure will need to be revisited in the near future. The continual development of newer software creates future challenges with maintaining the functions of the site. We also need to add new links to make it more user friendly for our members.

So much for today. During the following weeks, I will report on the matters considered and approved at the recently held Executive Council meeting, including the first long range plan ever approved. That will be reported in a separate message. Meanwhile, suggestions and recommendations on how to improve our service to you would be greatly appreciated.

The tradition of excellence continues

INTERNET & TECHNOLOGY COMMITTEE

CATHRYN SPAULDING - MA

The Internet & Technology Committee is working together with the Marketing Committee to develop innovative ways to encourage ADTA members to refer business to other ADTA members. We continue to utilize the website to update information for the annual meetings and direct members to the blog. David Zizik continues to update the blog for the upcoming 70th ADTA Annual Meeting in Maui, Hawaii on April 5 - April 9, 2011. Go to <http://adtamaui2011.blogspot.com/>, for details.

2011 - MAUI, HAWAII ADTA'S 70TH ANNUAL MEETING

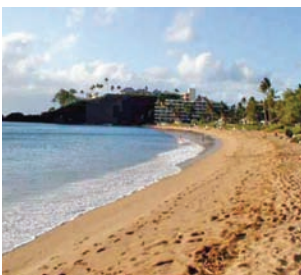
WILLIAM H. STAPLES - CA



Is there a chill in the air, snow on the ground? Winter is here! Time to pull out the winter gear, find the snow shovel and put the golf clubs away. Stop! Day dream for a minute. Let your thoughts drift off to a tropical island, with light warm breezes, incredible beaches, golf all year round and pure relaxation.

You're not dreaming, you're on your way to Maui... to the ADTA's 70th Annual Meeting at the incredible Sheraton Maui Resort and Spa at Kā'anapali Beach. The meeting runs from Tuesday, April 5th through Saturday, April 9th, 2011. All you need to do is to remember to pack your flip flops, shorts, Tommy Bahama shirt and swim suit. Catch up with friends, brush up on your legal skills and enjoy the best meeting any organization puts on!

If you have never been to the Hawaiian Islands, you are in for the treat of your life. If you have been, those Islands are calling you back. Here are some of the highlights for ADTA Maui 2011:



- President's Reception on the lawns overlooking the spectacular beach at Black Rock.
- Incredible hotel amenities, including all ocean view rooms.
- Top notch CLE organized by George Walker and his gang of three.
- Wednesday night dinner-dance at the acclaimed Maui Ocean Center, where the entire aquarium is reserved for ADTA.

• Thursday afternoon golf at the Royal Kā'anapali course designed by Robert Trent Jones in 1962 and renovated by Robin

Nelson in 2006.

- Snorkeling adventure around the Island.
- Whale watching excursion.
- Leisurely activities such as strolling the beach, exploring the shops, and enjoying all the entertainment along Kā'anapali Beach.
- Thursday night organized dinner-around at the incredible restaurants in the historic fishing village of Lahaina.



• Enjoying a Mai Tai or Blue Hawaiian at the ADTA Hospitality Suite.

• Hawaiian gala dinner dance (no black ties).

• Everything else you have come to expect at an ADTA meeting and more.



The theme for this meeting is casual and laid back. You will have time to relax at the pool or beach. Visit, explore and shop in Lahaina. Go scuba diving or zip lining. If you come early or stay late, there are many full day trips which may include a trip to the top of the Haleakala Crater (and a bicycle ride down) or a visit to the tropical rain forest and waterfalls on the way to Hana. Fly to Oahu and visit Pearl Harbor and the Arizona Memorial. Round trip flights are only \$129, take a half hour and leave every 20 to 30 minutes.

To keep you up to date on the planning, activities and other things you need to know, we have set up a blog at <http://adtamaui2011.blogspot.com/>. Check it now and check it often. It will be continuously updated, including airline information, links to the hotel, activity sites and more. Add your own comments!

If you are planning early and want to visit other islands, you can make advance discounted reservations by calling 1-800-782-9488 and ask for SET #338304. This would include the Sheraton Waikiki, Moana Surfrider, Sheraton Princess Kaiulani and Royal



Hawaiian Hotel, all at Waikiki Beach, Oahu. Also, the Sheraton Keauhou Bay Resort & Spa (Kona), Westin Maui Resort & Spa, Sheraton Kauai Resort and the St. Regis Princeville Resort (Kauai). If you want an extended stay at the Sheraton Maui before or after the meeting, contact our

Executive Director, Peggy Schultz (pschultz@adtalaw.com) as the reservation number is ONLY for the other Resorts and Hotels.

Aloha!

THE ASSOCIATION PRESS

EDITOR

LINDA J. HAY

LHay@illinois-law.com

ALHOLM, MONAHAN, KLAUKE,
HAY & OLDENBURG, L.L.C.

221 N. LA SALLE ST., SUITE 450
CHICAGO, IL 60601

312-704-8444

NEW ORLEANS — 2012

MATTHEW W. BAILEY - LA

The ADTA will meet at the Royal Sonesta on Bourbon Street, in the heart of the French Quarter, in New Orleans, Louisiana, for its annual meeting in 2012. Mark your calendars now as the meeting will kick off on Wednesday, April 18, 2012, and continue until Sunday, April 22, 2012.

The lively French Quarter, right outside the doors of the Royal Sonesta, serves up an exciting gumbo of activities – charming bistros, antique shops and art galleries, boutiques, historic sites, sensational live entertainment and local and world-wide inspired foods. It truly is one of the world's most exciting neighborhoods.

Our Hospitality Suite will include the most sought after balcony on Bourbon Street and will allow you to enjoy the sights and sounds of Bourbon Street from above while mingling with other members of the ADTA.

Our Thursday night event will take place at the National World War II Museum, where the entire group will have a private showing of *Beyond All Boundaries*. This is a unique and powerful 4D cinematic experience available nowhere else in the world.

Mark your calendars – we look forward to seeing you for what surely will be an exciting meeting.

MEMBERSHIP REPORT

WILLIAM H. STAPLES - CA

In the six months since our Boston meeting we have welcomed 20 new members to ADTA! Between now and our Hawaii meeting I hope to welcome at least that many, and more, but I can't do it alone. Your Regional, State and Province Chairs can't do it alone. We need YOUR help.

You may ask yourself, if the Committee is doing so well in bringing in new members, why do they need my help? Because, as we welcomed the new members, we lost just about the same number. This is due to our ever increasing Emeritus group and loss of some who were only taking up a space in the Directory.

ADTA is a special organization. It allows only one selected, qualified defense trial attorney per city or town up to one million in population. We get together, exchange ideas and become even better defense trial attorneys. The more experienced defense trial attorneys that join us, the better we become. We don't want just the best defense trial attorneys from New York City, Boston, Miami, Chicago, Dallas, Los Angeles and San Francisco. We also want the best defense trial attorneys from Schenectady, New York, Franklin, Tennessee, Albuquerque, New Mexico, Grand Forks, North Dakota and Ventura, California.

How do we get them? WE don't. You do! You already know them. Talk to them. Let them know what ADTA is all about. You just attended a fantastic meeting in Boston and we are working

to make Hawaii even better. What better marketing tools do you need? Pass the word. Applications are available on our website (ADTAlaw.com). Make it your personal goal to sponsor one new member before our next annual meeting.

While you are at it, look at your own firm. Did you know that we have approximately 420 Prime members and only 150 Associate members? I'll bet at least 75% of you reading this article are 55 years old or older. When are you going to bring your younger partners into the organization, when you retire? Start now. Let them enjoy the benefits of attending an annual meeting with you or when you can't. Let them start to take over responsibilities, participate in our committees and help the organization remain strong. Add an Associate Member today!

NEW MEMBERS



Paul D. Curtis

Axley Brynelson, LLP
Madison, Wisconsin

Paul Curtis is at Axley Brynelson, LLP, in Madison. Paul is a graduate of the University of Minnesota Law School (1999). Paul and his wife, Kerry, have two young children, Ty (10) and Makae (8). Kerry is a Human Resources Manager at TDS Telecom. Paul practices in insurance defense, premises liability, and commercial litigation. Paul is a Board Member for the Wisconsin State Bar Professionalism Committee, and has been named to Who's Who in American Law every year since 2007. Paul enjoys hunting, fishing, and family activities.



Miles M. Dewhirst

Dewhirst & Dolven, LLC
Colorado Springs, Colorado

Miles Dewhirst is at Dewhirst & Dolven in Colorado Springs. Miles attended law school at the University of Nebraska, obtaining his law degree in 1987. Miles and his wife, Lori, who is a special education teacher, have three children, Julia 21, Breanne 19, and Abby 17. Miles represents corporations regarding commercial disputes, construction defects, medical malpractice, premises and products liability, and transportation matters. Miles was a Presidential Intern at The White House, Washington, D.C., has been recognized with the United States Attorney General Special Achievement Award, and is a Fellow of the Colorado Bar Foundation, as well as a Member (5% of Colorado Attorneys). He is also a Member of Who's Who in Practicing Attorneys. Miles is a Member of the Council on Litigation Management (CLM), the Defense Research Institute (DRI), the Leadership Program of the Rockies (LPR), the Council for National Policy (CNP), and the Colorado Defense Lawyers Association (CDLA). Miles enjoys skiing, tennis, golf, hiking, and reading. Miles is also on the Board of Directors, and is a Chair for Big Brothers Big Sisters, Pikes Peak Region, and is on the Board of Directors for the Broadmoor Rotary Foundation.


John M. Drath

Bishop, Barry, Drath
Emeryville, California

John Drath is at Bishop, Barry, Drath in Emeryville. John is a graduate of the University of San Francisco School of Law, where he obtained his Juris Doctor in 1969. John and his wife, Michele, have one son, John, who is 37 years old. John practices in professional liability and personal injury defense, and works in mediation of cases as well. John is a Past President of the Association of Defense Counsel of Northern California (1992-1993), and a past State Representative for DRI (2005-2008). John is a member of ABOTA, the American College of Trial Lawyers (Fellow), the Federation of Insurance and Defense Counsel, the Mediation Society of San Francisco and last but certainly not least, the Lawyer Friends of Wine. John is a returning member to ADTA, having been an associate member when his then partner, John Clifford, was the primary member. John looks forward to renewing ADTA acquaintances, and introducing one of his younger partners, Peter Linn, to the ADTA, whom he refers to as the "best defense group in the country." In his spare time, John counts golf and fly fishing among his avid interests, but admits that both are forms of induced humility as opposed to true "hobbies."


Douglass Farnsley

Stites & Harbison
Louisville, Kentucky

Doug Farnsley is at Stites & Harbison in Louisville. Doug obtained his JD from the University of Louisville in 1976 and his LLM from the University of Wisconsin in 1980. Doug's wife, Eliza (Liza) is a Medical Research Associate for Pfizer

Pharmaceuticals. Doug and Liza have two children, Julie Evans, 32, and Charlie Farnsley, 28, along with two grandchildren, Winn Evans, 4 and Molly Evans, 1. Doug focuses on civil trial work, medical device defense, and professional liability defense. Doug has been honored by Best Lawyers, was named Louisville Lawyer of the Year, Medical Malpractice (2010) and Product Liability (2011). He has been named a Super Lawyer, one of the Top 50 in Kentucky 2007-2009, and is a Fellow of the American College of Trial Lawyers. He is also a member of the International Academy of Trial Lawyers, and the International Society of Barristers. Doug also served on the Kentucky Bar Association Board of Governors. Doug enjoys politics, travel, antiques, and history.


J. Campbell Helton

Whitfield & Eddy, P.L.C.
Des Moines, Iowa

J. Campbell Helton is at Whitfield & Eddy, P.L.C. in Des Moines. Jay attended Drake University and obtained his JD in 1995. Jay and his wife, Kimberly, who is a musician, have four children, Madison, 14, Olivia, 11, Isaac, 7, and Campbell, 5. Jay practices in civil trial work. He is the Chair of the Iowa Bar Association Professionalism Committee. Jay enjoys watercolor, reading, biking, and spending time with family.


David C. Holler

Lee, Erter, Wilson, Holler & Smith, LLC
Sumter, South Carolina

David Holler is at Lee, Erter, Wilson, Holler & Smith, LLC in Sumter. David graduated from the University of South Carolina School of Law in 1991, and is licensed to practice law not only in South Carolina, but also in North Carolina and Georgia. David and his wife, Rev. Josie C. Holler, who is a Minister at Presbyterian Church USA have three children, Stewart (12) Grey (10), and Owings (8). David focuses in the areas of GCL defense, commercial vehicle defense, professional malpractice defense, and construction. David enjoys fishing, hiking, and scuba.


Joel D. Johnson

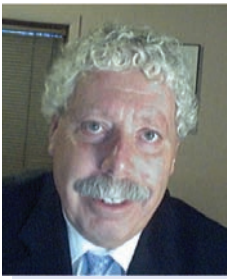
Warner, Smith & Harris, PLC
Fort Smith, Arkansas

Joel Johnson is at Warner, Smith & Harris in Fort Smith. Joel graduated from the University of Arkansas, where he obtained his law degree in 1978. Joel's wife, Melissa Johnson, is a retired pre-school teacher and administrator. Joel and Melissa have three children, Melissa Ruth Rye, Mary Beth Horton, and Lara Johnson, as well as two grandchildren, Andrew (3-1/2), and William Joel (1-1/2). Joel concentrates in personal injury, product liability, breach of contract, business, oil and gas, construction, employment and railroad litigation. Joel was awarded the Arkansas Pro Bono Attorney of the Year in 1993 and 2002, and is a past President of the Arkansas Association of Defense Counsel – 1999-2000. He was also an Arkansas State Representative to DRI in 2002. Joel enjoys hiking, backpacking, fishing, pencil sketching and playing with his grandsons.


Howard Jump

Jump & Associates, P.C.
Chicago, Illinois

Howard Jump is at Jump & Associates in Chicago, Illinois. He attended Mercer University, where he obtained his Juris Doctor in 1979. Howard's wife, Marianne, works as a dental assistant. Howard focuses his practice in the areas of insurance defense and coverage, construction, and products liability. Howard has been recognized by the Illinois Association of Defense Trial Counsel (IDC) with the President's Commendation, in 1995, the Chicago Volunteer Legal Services, Distinguished Service Award in 2000, the IDC Meritorious Service Award in 2006, and the IDC Distinguished Member Award in 2008. Howard presently serves as second vice president for the IDC. Prior to that position, Howard served on the IDC Board of Directors and acted as Board Liaison to the Insurance Law Committee. Howard enjoys running, skiing, reading, and trim carpentry in his spare time.



Dan D. Kohane
Hurwitz & Fine, P.C.
Buffalo, New York

Dan Kohane is at Hurwitz & Fine in Buffalo. Dan and his wife, Christine Naples, have two children Kariel (28) and Jacob (25). Christine recently retired after 29 years as an Occupational Therapist for the Buffalo School System. Dan and

Christine have no grandchildren they know of, yet. Dan focuses his practice in the areas of insurance coverage and commercial litigation. Dan is a past President of the Federation of Defense & Corporate Counsel, 2006-2007, and a past Board Member of both DRI and Lawyers for Civil Justice. Dan has been recognized by Best Lawyers in America, 2009 - 2011, in the categories of Insurance Law and Commercial Litigation and received the Service Award, in 2008, from DRI - The Voice of the Defense Bar. He was named as one of the "Top 50 Super Lawyers" in Upstate New York and "Super Lawyer" in the area of Insurance Coverage, in 2007, 2008, and 2009. He has been honored by Who's Who in Law, 2004 - 2009, Buffalo Business First and Buffalo Law Journal, received the DRI Leadership Award, in 2002, and received the Sarah G. Metzger Human Rights Award, 2000, Housing Opportunities Made Equal, Inc. Dan enjoys travel as well as technology.



David M. Louie
Roeca, Louie & Hiraoka
Honolulu, Hawaii

David M. Louie is at Roeca, Louie & Hiraoka in Honolulu. David is a graduate of Boalt Hall School of Law, UC Berkeley, 1977. David's wife, Johanna Chuan, is an advertising media supervisor, and David and Johanna have two children,

Ryan, 22 and Jenna, 18. David practices in aviation litigation, civil litigation, commercial litigation, construction defect litigation, contract disputes, D and O, insurance defense, legal malpractice, premises liability, product liability and prison litigation, toxic torts and professional errors & omissions. David was named in Best Lawyers in America, 2011, Hawaii Super Lawyers, 2008-Present, is the current Vice-Chair of the Hawaii Supreme Court Special Committee on Judicial Performance, and is the current Governor of the National Asian Pacific American Bar Association (NAPABA). He has been a representative to the Judicial Conference of the United States Court of Appeals for the Ninth Circuit, Lawyer Representative, 2005-2008, and is a past President of the Hawaii State Bar Association, along with numerous other accolades. David is active in numerous bar associations including the FDCC, and the Hawaii Defense Lawyer Association where he serves as a Director. David enjoys woodturning and golf in his free time.



Brooks Magratten
Pierce Atwood LLP
Providence, Rhode Island

Brooks is at Pierce Atwood in Providence. Brooks and his wife, Paige, a reading tutor, have a 14 year old, Colby. Brooks attended the Dickinson School of Law, where he obtained his Juris Doctor in 1986. Brooks' practice focuses

in ERISA issues and insurance and commercial litigation. Brooks has an AV rating, and was named a Super Lawyer in Rhode Island Monthly Magazine (2008-2010). Brooks is also listed in Best Lawyers in America, 2011 Edition, is an editor of ERISA Survey of Federal Circuits (ABA), is a NITA Faculty Member and an Adjunct Professor of Federal Practice at the Roger Williams Law School. Brooks is the current President of Defense Counsel of Rhode Island (DCRI), is active in the FDIC Admissions Committee, and the Commercial Litigation, Life, Health & Disability and Products Liability Sections. He is a member of the IADC General Convention, Business Litigation, Products Liability and Insurance & Reinsurance Committees, and also serves as the Northeast Regional Director of DRI, chairing its Life, Health & Disability Insurance Committee. Brooks enjoys playing golf, walking, and traveling.



Peter T. Marchesi
Wheeler & Arey, P.A.
Waterville, Maine

Peter is at Wheeler & Arey in Waterville. Peter's wife, Linda, is a teacher. Together, Peter and Linda have six children: Katie, 19; Nick, 17; Ethan, 16; Emily, 15; Vincent, 13; and Griffin, 11. Peter attended Vermont Law School and

obtained his Juris Doctor in 1989. Peter concentrates his practice in the defense of county governments in civil rights and employment litigation, as well as in the area of insurance defense. Peter enjoys gardening in his spare time.



Mark C. Nanavati
Sinnott Nuckols & Logan, P.C.
Midlothian, Virginia

Mark Nanavati is at Sinnott Nuckols & Logan, in Midlothian. Mark obtained his Juris Doctor from The George Washington University National Law Center in Washington, D.C., in 1995. Mark and his wife, Julia, a business manager with

Hunton & Williams, have two children, Charlie, age 5, and Kate, age 4. Mark focuses his practice in the areas of insurance defense, insurance coverage, construction defect litigation, professional liability, and general civil litigation defense. Mark has a Martindale Hubbell AV rating, 2010, is a Virginia Super Lawyer in the civil litigation area, 2008, and was recognized as one of Virginia's Legal Elite, as noted in Virginia Business Magazine (December 2008 edition). Mark enjoys fishing, fine wine, and good food.



Mike Weston

Lederer Weston Craig, PLC
Cedar Rapids, Iowa

Mike Weston is at Lederer Weston Craig in Cedar Rapids. Mike is a lifelong Hawkeye fan, and obtained his law degree from University of Iowa in 1980. Mike and his wife, Julia, who works as both a homemaker and the CEO of the family, have five children: Ben 28 (wife Leah), Tyler 25, Zachary 15, Kate 12, and Mary 10. Mike practices in the areas of insurance/bad faith, product liability, commercial litigation, tort defense, and toxic torts. Mike is a member of the IADC, and a Fellow of the Iowa Academy of Trial Lawyers, the ABOTA, and an Iowa Super Lawyer. Mike is also a member of Chambers USA for Business – Band 1 Insurance and Band 2 Commercial Litigation. Mike has held leadership roles in the Iowa Defense Counsel Association, and was a Faculty Member for the IADC 2003 Trial Academy. He was the Plains Region/Iowa Membership Chair, and the Trial Tactics Vice Chair for the IADC. He was State Representative, National Board Member, Public Policy Committee Chair, and 2nd Vice President for DRI, as well as the 2011 NFJE Symposium Program Chair. Mike is a lifelong (and long-suffering) Chicago Cubs and Chicago Bears fan. Mike enjoys spending time with his family, as well as golf, fitness, and politics.

IADC UPDATE

JOSEPH W. RYAN, IADC PRESIDENT

It was my pleasure and honor to take on the position of President of the IADC in July of this year. The first quarter of my term has been exciting and filled with great work by the IADC Board of Directors, Committee leaders and members.

Among the initiatives to tackle this year is the “Think IADC First” campaign. This effort is designed to encourage and assist members with business referrals and business development. Included in this campaign has been an upgrade to our IADC Web site with a more user-friendly online member directory. There is a general public search that provides professional information on our members, or members can log in and access a more extensive member directory. We have some of the best legal resources in the world among our members. This campaign is designed to not only help members better utilize each other but also to develop more business.

The IADC recently held its third International Corporate Counsel College in Paris, France. This program, which focuses on European legal topics and issues, keeps getting better and better each year. The panelists were impressive and the discussion among the participants was enlightening.

The IADC continues to build on its successful Webinar offerings. When we started the program last year, we expected to do an occasional Webinar. Now during some months we are doing one per week. They are half hour or one hour programs. Some are geared toward the members and some are geared toward their associates. The Webinars are easy to attend and free to members and their firms.

Our Midyear Meeting is in Pebble Beach, California in February

with our Annual Meeting to follow in July in Whistler, Canada. Both meetings are shaping up to be excellent with fantastic continuing education and general interest sessions. At the Midyear Meeting, our Foundation Forum will feature Senator Bill Bradley - politician, businessman, author, commentator and former NBA basketball star. He will kick off a very full meeting of education and fun activities.

In addition, I look forward to our annual Corporate Counsel College on April 14-15 in Chicago and the Professional Liability Roundtable on May 19 in New York.

Please be sure to check out our Web site at www.iadclaw.org for more information on IADC events, member accolades, and other information. In particular, please note our schedule of Regional Meetings. They are easy, complimentary meetings that offer a chance for local members and guests to meet. If there is a Regional Meeting in your area, I invite you to join us.

NATIONAL ISSUES REPORT

THOMAS J. HURNEY, JR.

Introduction

On the “national issues” front, there are two issues of particular interest to our members, preemption and reporting by attorneys regarding potential liabilities to client auditors.

Federal Preemption

The ADTA has been on top of federal preemption for some time. As you may recall “Tommy & Boog Do National Issues” at the 2008 Phoenix Meeting, where we discussed *Riegel v. Medtronic* and *Levine v. Wyeth*, and learned that prescription drug cases are not preempted and medical device cases are. Issues continue to abound about the length and breadth of the preemption doctrine. On October 15, 2010, the Eighth Circuit affirmed dismissal of actions against Medtronic over defective heart defibrillator leads. *Bryant v. Medtronic*, Slip Op. No. 09-2290 (8th Cir. Oct 15, 2010). In *Bruesewitz v. Wyeth* (U.S. Docket No. 09-152), another preemption case, the issue is whether the Vaccine Act expressly preempts state tort law claims over infant vaccines, and that case was argued in the United States Supreme Court on October 12. On November 3, the Supreme Court heard argument over whether a lack of rear shoulder belts, which were permitted but not required by the Federal Motor Vehicle Standard, could be a product defect under state law, without conflicting with the federal regulation. (*Williamson v. Mazda Motor*, U.S. Docket No. 08-1314) Finally, Arizona’s enactment of a border security law implicates preemption is an “in the news” issue.

Since *Riegel*, there have been various efforts to undo preemption of medical device claims. The Obama administration has expressed opposition to preemption (other than express preemption) by agency statements:

[T]he general policy of my Administration that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for pre-

emption. Executive departments and agencies should be mindful that in our Federal system, the citizens of the several States have distinctive circumstances and values, and that in many instances it is appropriate for them to apply to themselves rules and principles that reflect these circumstances and values.

(Memorandum For the Heads of Executive Departments and Agencies, Office of the Press Secretary, The White House (May 20, 2009), available at http://www.whitehouse.gov/the_press_office/Presidential-Memorandum-Regarding-Preemption/.)

The Memorandum prohibits the heads of departments and agencies from including in regulatory preambles statements regarding preemption (used during the Bush administration), and requires review of regulations and removal of preemption statements.

On the Legislative side, The Medical Device Safety Act of 2009 (MDSA) [S. 540, H.R. 1346] is an effort to undo *Riegel* and amend the Medical Device Act to revoke preemption with respect to medical devices. Referring to *Riegel* as flawed, the MDSA explicitly clarifies that state product liability lawsuits are preserved, not preempted. The MDSA was supported by consumer and trial lawyer organizations, and opposed across the board by industry and defense groups. It is currently still mired in committee.

The ABA has opposed preemption, first by its President, who in December 2008, wrote to Congress supporting its reintroduction of the MDSA. More recently, on July 16, 2010, the ABA Board of Delegates adopted a resolution which “urges Congress to address foreseeable preemption issues clearly and explicitly when it enacts a statute that has the potential to displace, supplement, or otherwise affect state tort law by: (1) clearly and explicitly stating when it intends to preempt state tort law; and, (2) clearly and explicitly setting forth the extent of the preemption of state tort law it intends, and the extent to which, through a savings clause or other means, it intends not to preempt state tort law or related common law duties.” The resolution also “urges Congress, when making any decision on whether to preempt state tort law, to take into account the historic responsibility States have exercised over the health and safety of their populace and to balance the competing concerns relating to preemption.”

Various groups opposed the ABA’s support for MDSA, including DRI. In 2009, DRI President Marc Williams (an ADTA member) advised the ABA President of DRI’s opposition to the ABA’s position on MDSA. The ABA’s current preemption resolution is the subject of study by a coalition of defense groups, including DRI, ADTA, IADC and FDCC. George Walker is leading the effort for ADTA.

Accounting Disclosure Related to Litigation Contingencies

All of us have responded to audit requests and drafted language for insertion in public filings such as 10(k)’s. A principal concern in preparing these documents, which the client must supply to accountants, investors and perhaps others, including the Internet, where everything ends up these days, is the waiver of attorney client privilege (not to mention giving the strategy of the case to the other side).

To examine this concern, it is necessary to provide some context, and historical guidance, with due credit to Bruce Nye’s Cal Biz Lit Blog (www.calbizlit.com). Audit responses are governed by a 1975 “Treaty” between the lawyers (ABA) and accountants (AICPA) entitled the “Statement of Policy Regarding Lawyers’ Responses to Auditors’ Requests for Information.” The standard addresses the concerns of counsel regarding the waiver of the privilege and appropriate consent from the client. Auditors want certainty about litigation contingencies — are they probable, reasonably probable or remote — and the value of the potential loss for accrual on the books so the investors have accurate information. The Treaty provides guidance, and limitation, upon the information lawyers must provide for auditors and protects the attorney client privilege and work product doctrines.

This year, the Financial Accounting Standards Board released a Proposed Accounting Standards Update related to the disclosure of certain loss contingencies in the *FASB Accounting Standards Codification*, which “is the source of authoritative generally accepted accounting principles (GAAP) recognized by the FASB to be applied by nongovernmental entities.” The FASB wants disclosure of more information because of concerns expressed by investors that current disclosure standards “do not provide adequate and timely information to assist them in assessing the likelihood, timing and magnitude of future cash outflows associated with loss contingencies.” The proposed disclosures “are intended to enable users to understand the nature, potential magnitude, and potential timing (if known) of loss contingencies.”

Why do we care? The proposed standard, according to the FASB itself, “would lower the current disclosure threshold and broaden the current disclosure requirements to provide adequate and timely information to assist users in assessing the likelihood, potential magnitude, and potential timing (if known) of future cash outflows associated with loss contingencies.” As summarized in the current proposal,

An entity shall disclose qualitative and quantitative information about loss contingencies to enable financial statement users to understand all of the following:

- a. The nature of the loss contingencies;
- b. Their potential magnitude;
- c. Their potential timing (if known).

Cutting to the chase, as well stated by Mr. Nye, “[t]he new standard contains none of the protections of the Treaty, and requires companies to ask lawyers to provide information to non-clients — independent accounting firms — that in many instances cannot be provided without breaching the attorney-client and work-product privileges.” Thus, “[t]he new standard contains none of the protections of the Treaty, and requires companies to ask lawyers to provide information to non-clients — independent accounting firms — that in many instances cannot be provided without breaching the attorney-client and work-product privileges.” Some problems with the proposal include the disclosure of maximum exposures.

The FASB has already amended its original proposal in response to commentary expressing concern by lawyers and many corporations. The amended draft, released July 20, 2010, with comments due August 20, 2010, remains controversial and is opposed by the corporate side. Your National Issues Committee will continue to monitor the evolution of this standard.

A WORD FROM LOU

LOUIS M. SCOFIELD, JR. - TX

I don't like it when I do or say stupid things. But I forgive myself.

For some reason though, I have a hard time forgiving some of the stupid things others do or say. A mature response on my part would involve tolerance, Judeo-Christian forgiveness and the common sense not to waste my time on the ridiculous. But, dear readers, as you know from your past visits to this column, I have none of these attributes. And as usual I am going to impose my thoughts upon you.

I am bothered every time a business or service advertises its "combined years of experience." I've seen an ad on television where a law firm promoted itself as having 50 years of combined legal experience. That is just stupid. Don't slow me down...these advertising people are stupid. I know of a kindergarten class with 25 five-year-olds who, upon completing the year, will have 25 years of "combined academic experience." That is much more than it took most of us to get through school. Even so, I am not going to sit in one of those tiny chairs, shove little Mimi's pile of blocks aside, and ask her to compare George Berkeley to John Locke and David Hume.

By the logic of "combined experience" there are some very large law firms that numerically have more than 2000 years of "combined legal experience"...a claim that could easily enough take them back to the time that the Lord was walking among us. Now that's impressive, eh? How exactly does 2000 years of combined legal experience work? I know the *Rule against Perpetuities* is slightly complex, but even I wouldn't need more than 1100 or 1200 years of experience to understand it.

Anyhow, you get my point. It is stupid to tout one's competence by such a standard. While partners, associates and support staff are a huge help to us all, when distilled to its elements, the experience and talents of the single lawyer is what the client, rationally, looks to. Along these lines falls a tale from back when the large "mega firms" were just getting started.

In the 1970s Fulbright & Jaworski was considered one of the biggest firms, with roughly 250 lawyers. One of its attorneys appeared at a hearing where the judge was scheduling further hearings. The attending lawyer advised the court that he would not be available for the selected future date. To this the judge responded – "You have 250 lawyers there at Fulbright. Get someone to cover it for you." The Fulbright lawyer brightly replied, "Yes Judge we are 250 wide, but unfortunately we are only one deep."

Another thing that bothers me is that George Orwell's *ANIMAL FARM* is not required reading for everyone that works for the government. Although most of the government readers would view it as a "How To" book, rather than political satire, if I were running the World, I would make everyone of those feather-bedding politicians and intractable bureaucrats not only read the book, but take a test at the end. If they failed the test, they wouldn't lose their job (no one in government ever loses their job) but would be reassigned to the Louisiana Gulf Coast and required to use their hair to sop up excess oil from the BP Oil Spill.

Excessive? Perhaps, but this ranting and venting on my part is already making me feel better.

Another thing that bothers me is the way we are passively allowing the civil jury trial to be taken from us. Talk about stupid, allowing this is *really* stupid. Yet time and again legislators preclude civil liability and substitute administrative remedies for dispute resolution. On top of that, it is now commonplace for sellers of goods and services to insert arbitration clauses in consumer contracts...and they are being enforced. Setting aside the implications that this has for freedom, and the fair administration of justice, it isn't much fun. As for me, I will take the combined intelligence of 12 jurors over three arbitrators, any day. [I know, I know. My reverence for the jury's "combined intelligence" seems inconsistent with my rant against "combined experience." Answer: It isn't. See how easy it was to dispatch your incredulity?]

And that reminds me of one more thing that bothers me. Since when is consistency such a virtue? Since we first communicated, people have had the recognized right to change their minds: "Chase the mammoth! Spear the mammoth!... —er—... Run away! Flee the mammoth!" See?

Even so, a day does not go by without some television show, newspaper or other media trotting out some video or recording of a past statement made by a public figure that is now completely (or at least, "apparently") contradictory to that person's current position. This "Aha!" or "Gotcha!" doesn't prove anything. Whether you are liberal or conservative, being "caught" with some statement from your past should not amount to a hill of beans. What is important is whether, after growth and consideration, the position you are expressing now is correct. If you are now correct, I applaud your conversion. If your changed position is now wrong, shame on you. But it is no more "wrong" if you happen to have been right in the past, than if you have always been wrong. It is, simply, wrong.

So this gloating over inconsistency should stop. Though I agree consistency in accurate and honest speech is a virtue, consistency in inaccurate and dishonest speech is not. And this ridiculous attention to prior inconsistent opinions holds the threat of chilling a person's willingness to adopt a better, but different, position, for fear of being excoriated merely for the change. Reasonable flexibility is lost.

Sigh...but such excoriation is too tempting for the media to stop doing it. In view of this I request that each of you, upon completing your reading of this article, gently tear it from the other pages, chew it up and swallow it, so it cannot be used against me in the future.

ABOUT OUR MEMBERS

Steve Crislip, Past ADTA President. Steve Crislip recently completed his term as the 125th President of the West Virginia Bar Association, the third oldest in the country and one which has been in continuous operation since 1887. Their meeting was held at the historic Greenbrier Resort in White Sulphur Springs, West Virginia where the ADTA will hold its annual meeting April 17-21, 2013.

Gerald W. Weedon, Past ADTA President. Gerald W. Weedon, President of Marks Gray, P.A., a Jacksonville-based law firm, was recently awarded the Patriotic Employer Award by the city of Jacksonville and the Florida Committee for Employer Support of the Guard and Reserve. That award recognized Marks Gray for the firm's support of employees actively serving in the U.S. National Guard and Reserve. "It's an honor to work with those serving in the reserved armed forces," said Mr. Weedon. "Creating a positive and supportive work environment for members of our military has been, and will continue to be, a priority for the firm." The Patriotic Employer award recognizes managers, supervisors and employers that show support of their employees' participation in the U.S. National Guard and Reserve through employment practices and policies. Mr. Weedon was nominated for the award by Stella J. Lane, an associate of Marks Gray and former member of the United States Navy. Ms. Lane is currently a member of the U.S. Navy Reserve. Marks Gray is a multi-faceted law firm with a diverse practice that has included extensive commercial and professional liability and other tort defense litigation as well as banking, real estate, business law, probate, tax law, estate planning, immigration and workers' compensation.

Fred D. Raschke, ADTA Member. Fred D. Raschke, Managing Partner of Mills Shirley L.L.P., has recently been elected to serve as Chair of the Board of the Galveston County Salvation Army, while at the same time nearing the completion of his second year serving as Chair of the Galveston Chamber of Commerce. In addition, The Texas Association of Defense Counsel (TADC), at its 50th Anniversary Annual Meeting in San Antonio, on September 24, 2010, awarded Fred the President's Award for "Leadership, Service and Dedication."

Robert L. Jones, III, ADTA Member. "Bobby" Jones, has been awarded the 2010 Arkansas Outstanding Lawyer of the Year by the Arkansas Bar Association and Arkansas Bar Foundation at its June meeting. Bobby is currently State Chair of ADTA, a Fellow in IATL, as well as ACTL, and a past President of the Arkansas Bar Association. He is a partner with Conner & Winters in Fayetteville, Arkansas.

Morris (AKA Moe) Chochla, ADTA Member. Moe Chochla was elected second vice president of the 17,000 member Ontario Bar Association and will assume the presidency two years later.

Anne M. Oldenburg, ADTA Member. Anne Oldenburg, of Alholm, Monahan, Klauke, Hay & Oldenburg, is slated to become President of the Illinois Association of Defense Trial Counsel in June of next year. The IDC has approximately 1,000 members.

Kim Colbo, Jimmy White and Steve Tervooren, ADTA Members. Kim Colbo, Jimmy White and Steve Tervooren, of Anchorage, Alaska have all been selected for inclusion in Best Lawyers in America (2011). Kim Colbo was recognized in the fields of Insurance and Personal Injury Litigation. Jimmy White was recognized in the field of Insurance Law. Steve Tervooren was been recognized in the fields of Product Liability Litigation, Personal Injury Litigation, Environmental Law, and Eminent Domain and Condemnation Law.

Inspired by ADTA's venue selection for the 70th Annual Meeting (and perhaps the scuba diving, sunsets, year-round warmth, and mai tais), Anchorage member Steve Tervooren, wife Kristy and son David have relocated their residence to Kihei, Maui. Steve continues as a full-time member of Hughes Gorski Seedorf Odsen & Tervooren, LLC in Anchorage, but will be serving clients from the firm's unofficial Maui office, telecommuting and shuttling back to Anchorage as necessary. If anyone would like some local advice on special sights to see, coral reefs to snorkel, restaurants to enjoy or the like while in Maui for our meeting, please email Steve at stervooren@hglawfirm.net.

Congratulations to all of these members for their well deserved recognition. Their efforts and achievements reflect the quality of the membership of the ADTA.

WHAT'S NEW IN MY STATE

ROBERT N. WEBNER - OH



Pierre Belanger, who maintains offices in both Montreal and Quebec City, specializes in defense of professional liability claims in Canada.

In the Canadian province of Quebec, high insurance costs have caused many professionals and organizations to establish self-insured funds. Hospitals established their fund in 1986. Attorneys, who are re-

quired by law to have insurance, followed suit in 1988. Since then, doctors, pharmacists, and notaries all have formed self-insured groups. For years, Pierre has been regularly retained by these self-insured groups to represent their members and professional bodies in defending against professional malpractice claims. He also acts as panel counsel for a major insurance manager in Canada who provides coverage in all fields of professional liability and construction.

Pierre notes that Canadian practice in the professional malpractice area differs from American practice in a number of respects. For example, civil jury trials were abolished many years ago, and as a result all civil claims are decided by judges. In addition, punitive damages are largely unavailable in Canada, and the courts are reluctant to award such damages. In order to establish a basis for punitive damages, the plaintiff must make a significant showing of bad faith almost reaching the level of criminal negligence, such as a wilful intent to cause damage or a clear awareness of the results of the reckless conduct. As a result, judges rarely make such awards.

The Canadian approach to assessment of damages also is significantly different. Recoveries are limited to pecuniary and non-

pecuniary damages. Pecuniary damages, such as loss of revenue and the cost of future care, are established by experts and actuaries.

Non-pecuniary damages, a category which includes pain and suffering and loss of enjoyment of life, have been capped since 1978 by ruling of the Canadian Supreme Court. The cap initially was set at \$100,000 and has been indexed for inflation. The current cap is \$375,000. Pierre notes that, to even reach the cap, the plaintiff must prove injuries that are severe, debilitating, and life-altering. Although the Canadian plaintiffs' bar has tried to establish new approaches to avoid the cap, Canadian courts have thus far declined to change the approach or allow exceptions. In Pierre's opinion, however, the courts' reluctance to change will not stop the plaintiffs' bar from continuing efforts to develop new theories and new arguments against the cap.

Pierre is a member of the Québec Bar and the Canadian Bar Association, a Governor of the Québec Bar Foundation, and a member of DRI. He has been "Repeated Recommended" by *Lexpert* as defense counsel in the field of medical malpractice. He joined the ADTA in 2009 and enjoyed his experience at the 2010 annual meeting in Boston.



Rob Tyner, of the Lockett Tyner law firm, has the rare opportunity to be both "country lawyer" and "city lawyer". His main office is in Clarksdale, Mississippi (population 18,000) but two days every week he sets up shop in the firm's satellite office in Sumner, Mississippi, a small town with a population of less than 1,000 residents. When he is at the Sumner office, he not only prepares wills, deeds, and title

searches, but also performs a variety of other legal services. Clients have no need for an appointment — they can just show up at the office and ask to see a lawyer.

When Rob is not handling drop-in business at the Sumner office, his practice spans a broad range of litigation work; his case load includes insurance defense, premises liability, medical malpractice, and nursing home negligence cases. He has worked at the Lockett Tyner firm since his graduation from law school in 1998.

Rob reports that tort reform efforts in Mississippi have worked well. Prior to the tort reform effort, Mississippi had become a hot spot for mass tort litigation, and Jefferson County in particular was nationally recognized as a "judicial hellhole." Tort reform did away with Mississippi's liberal joinder rule that encouraged mass tort actions, and imposed statutory caps on non-economic damages.

Since the enactment of tort reform, Mississippi has seen a sharp decline in filings, including a complete cessation of the mass tort drug cases that helped make Mississippi a hot spot in the first place. The decline in case filings was so significant that it caused some of the larger firms in the state to downsize.

Rob serves on the Clarksdale Municipal School District School Board, and also acts as attorney for the West Tallahatchie School District. He is the incoming chair of the Community Foundation of Northwest Mississippi, an organization that focuses on children, education, and health care issues in an eight-county area.

Rob has been a member of the ADTA for a number of years and currently serves as the ADTA State Membership Chair for Mississippi. He and his wife, Anna, have attended a number of annual meetings, including those in Galveston, Charleston, San Diego, Scottsdale, and the 2010 annual meeting in Boston.



In an era where lawyers change firms with increasing frequency, Pfenne Cantrell is something of an anomaly. Pfenne has practiced his entire 15-year career with Kightlinger & Gray, LLP in Indianapolis, Indiana.

Pfenne chairs the firm's professional liability practice group. Pfenne's practice focuses on trial work in the professional liability context, although he also handles appellate work in that area. In addition to his professional liability practice, Pfenne also defends clients who are sued in aviation-related matters.

Pfenne reports that there have been several noteworthy changes in Indiana law recently. In *Sibbing v. Cave*, a 2010 decision, the Indiana Supreme Court restricted the ability of defense counsel to attack the medical necessity of treatment received by the plaintiff. The Court held that defense counsel cannot challenge the appropriateness of medical care so long as the plaintiff has followed a doctor's orders and is not shown to have been negligent in the choice of physician. The decision has not been fleshed out by lower courts and leaves many open questions yet to be litigated.

In another recent case, the Indiana Supreme Court addressed the impact of health insurance "discount" arrangements on damages calculations in personal injury cases. The court held that if a health insurer has a pre-treatment agreement to pay a health care provider for the treatment at a discount, both the discount amount and the normal billed charge for the treatment can be presented to the jury. The jury may then decide which amount is "reasonable." Pfenne reports that this new approach already has had an impact on the ability to negotiate settlements.

Pfenne is a member of DRI and has served since 2005 on the Executive Committee of the Litigation Section of the Indianapolis Bar Association, and served as chair of the Executive Committee in 2008. He joined the ADTA in 2010, and he and his wife, Amy Denkmann, enjoyed the 2010 annual meeting in Boston.

RUMORS, GOSSIP AND INNUENDO ABOUT OUR MEMBERS



Frolicking in the Fall with the Brooms and Morgans....

Gordie and Holly Broom made a whirlwind trip through New England this fall that included a stop in the Green Mountains to visit Glenn and Betsy Morgan. As you will note in the photo, there was a serious meeting at Rutland Country Club. The group later traveled to Manchester, Vermont where Gordie finally had an opportunity to visit the famous home of Orvis. A good time was had by all!

Tidbits from the Tyner Family in Mississippi....

Anna Carson, age 11, is starring in a short film, shot by a local film maker. He plans to circulate it to film festivals, so perhaps there will be a star in our midst — other than Rob.

Rob finished fourth place in the Oktoberfest Regatta Sailboat Race in Heber Springs, AR. There were five boats entered; he managed to beat out two teenage girls so he could bring home a fourth place trophy.

Anna is officially over the hill having turned 40 in July; however, since Rob is only 37, Anna is as young as she feels.

The Forecast for the Flanagans

After a very busy summer, which kicked off early with the ADTA meeting in Boston, the older Flanagan kids are settled back into their school routines. Cade is gearing up for youth basketball and Audrey is in the middle of Nutcracker rehearsals for a December performance. Meanwhile, the twins, Claire and Ella, are busy perfecting their hula dancing in preparation for their 3rd annual ADTA meeting, all before the ripe age of 2! For those of you trying to do this math, their first meeting was spent soaking up the Arizona sun from inside the womb. Then, last April, they conquered Boston on all fours! Now that they have mastered walking, they are looking forward to hitting the beaches of Maui in only six short months.



A Whirlwind Year for Hay/Needham....

Linda Hay and Jack Needham have had a busy year. Avid sports fans, and season ticketholders for both the Chicago Bears (a so-so 2009 season) and the Chicago Blackhawks (an incredible 2009-2010 season), Linda and Jack learned what a true regular season and complete post season hockey fan must endure to get through — a profound lack of sleep, punctuated by bouts of pure excitement. Linda was thrilled to meet Lord Stanley's cup on two separate occasions, one of which was with her partner, Anne Oldenburg, at a client's office no less! Linda and Jack followed up their fall with a European whirlwind of a trip to Belgium and the Netherlands, to attend a wedding for friends in Antwerp, enjoying fine Belgian beer and chocolate.

Editor's Note: Thanks to Betsy Morgan, Jennifer Schlitz, Peggy Schultz and Eileen Ryan for their assistance in gathering these juicy tidbits!

NO DOUBT: IN THE ADTA, WE PREFER TO REFER

EDWARD L. BIRK - FL

So, it's 2 p.m. on November 15. I'm sitting here at the keyboard, already three days past Editor-in-Chief Linda Hay's deadline to submit a Marketing Committee article for the next Association Press. The screen is blank. My mind is blank. (No commentary on that point please.) I look over my notes from the recent Executive Council meeting in San Francisco. Nothing.

As always, when desperate, I pray. "God, please give me the words."

Within 60 seconds, the phone rings.

Caller ID looks like a telemarketer. I answer anyway. "Hello, Ed? My name is Tom _____. I'm calling from Columbus, Ohio. Bob Tait gave me your name and I'm hoping you can help us out."

Thank you, God.¹ Thank you, Bob Tait.

Ladies and Gentlemen: We Prefer to Refer is alive and well in the ADTA!

Most will agree – the core reason for our existence is to create and sustain a network of excellent defense trial counsel who rely on each other to serve their clients when hailed into court outside of their home jurisdiction. Last year, the ADTA named this prime directive: We Prefer to Refer. The ADTA also presented the first We Prefer to Refer award to the most exemplary referring member of the Association — Bobby Hood of Charleston, S.C.

As you see from my experience on November 15, We Prefer to Refer works!² I know it. The Executive Council knows it. Any member of the ADTA who has received a call like I did today knows it. And any member who has referred a client to another ADTA member knows it.

In light of this record of referral successes, the Executive Council in San Francisco wholeheartedly affirmed its support for our We Prefer to Refer mission by endorsing a plan to boost the role of the We Prefer to Refer award ceremony at the annual meeting. In addition, each member attending the annual meeting, not just the Marketing Committee members, will have a We Prefer to Refer ribbon on his/her name tag. We want everyone invested in this core concept.

As we get closer to Maui, continue to think about your fellow ADTA members when any opportunity to refer clients arises. You'll be glad you did. Ceci and I hope to see you in the hospitality suite—home base for the ADTA's culture of networking and referring.

¹ This is true. No literary license whatsoever. I had no prior discussion with Bob Tait about this client.

² Even without divine intervention, We Prefer to Refer still works.

BOOK REVIEW

PATRICK G. CULLEN - MD

Bargaining with the Devil, When to Negotiate, When to Fight by Robert Mnookin, Simon & Schuster, 2010, 321 pages, \$27.00.

If you would like to sharpen your skills at negotiation or if you sometimes have to decide whether to negotiate, proceed to trial or hire an assassin, you have come to the right book. In *Bargaining with the Devil*, Harvard Professor Robert Mnookin examines the whys, wherefores and especially the whens of negotiation. In particular the issue is discussed in the context of "Devils"; i.e., people or organizations that have hurt you. When such people have "done you dirt", as they say somewhere, should you consider negotiating with them? Professor Mnookin urges the adoption of a Star Wars-Spockian unemotional, detached and intellectual assessment of what each side wants and what each side stands to lose when deciding whether to negotiate or fight.

The author reflects upon global figures from yester year who were confronted by the "Devil". For example, Great Britain faced

the threat of invasion by German forces in May, 1940. Winston Churchill and his advisors debated whether to negotiate with Hitler to avoid that threat. Could President Bush have negotiated with the Taliban after the 9-11 attack? Jewish leader Rudolf Kaszner did negotiate with Adolph Eichmann to save Jewish lives. But was that the right decision? Two historical figures, Nelson Mandela and Anatoli (Natan) Sharansky, one in South Africa and the other in Russia, spent years and years in prison confronting the issue: negotiate or fight. What were their thought processes as those two men decided—negotiate or fight after "fighting" for many years from behind bars?

Beyond the global Devils, the author presents actual cases involving business Devils and family Devils. Two business matters involving global Devils made front page news, involved lots of money and had participants with the chutzpah¹ to slug it out in court. The author concisely tells of his personal involvement in both extremely high profile and complex matters. Dispute number one concerned IBM, the world's biggest computer company in the 80's, and its closest competitor, Fujitsu. At issue was whether Fujitsu had stolen programming materials from IBM. Boatloads of yen/dollars were at stake and the negotiators' thinking was not only outside the box, it was outside the box in which the box came. How about dispute resolution by two persons who each were part arbiters and part mediators?

Dispute two involved the San Francisco Symphony. The management-musician split was so serious the very existence of the Symphony was in jeopardy. Once again Innovation (yes, that is a capital "I") was employed by the author to bring that dispute to a favorable resolution by and with the cooperation of labor and management. (I learned also that the Detroit Symphony, which may still be in the throes of contract negotiations, knew of Professor Mnookin's reputation and had spoken with him.)

The author then turns to a discussion of his experiences with (a) three siblings in a dispute as to how their father's estate should be resolved and (b) a wife who wanted her pound of flesh out of a divorce case. In one of the matters, there was negotiation with the Devil. In the other matter, there was not. The author wraps up his book by giving four general guidelines in deciding to negotiate or fight with the Devil. While the first part of the book was a bit obtuse in terms of direct application to your average legal matter, the history lesson sets the stage for application of the author's teaching points. Being good at negotiating is great. Being able to figure out when to negotiate may be even more important.

¹ "Chutzpah" is defined in *The Joys of Yiddish* as (g)all, brazen nerve, effrontery, incredible 'guts,' presumption plus arrogance such as no other word, and no other language, can do justice to." *Carapcioglu v. Roosevelt*, 170 Md. App. 572, 611, 907 A.2d 885, 908 (2006).

OTHER MISCELLANEOUS NEWS

FEDERATION OF DEFENSE & CORPORATE COUNSEL ELECTS CORDELL AS PRESIDENT



F. Thomas Cordell, Jr. has been honored with election as President of the Federation of Defense & Corporate Counsel (FDCC), an international organization founded in 1936 to further the principles of knowledge, justice and fellowship in connection with professionals involved with the defense of civil litigation.

Tom Cordell obtained his undergraduate degree in English Literature from Oklahoma State University in 1976, his Juris Doctorate degree from the University of Idaho in 1979, and he was admitted to practice law in Oklahoma in 1979. Prior to joining his current firm, Frailey, Chaffin, Cordell, Perryman, Sterkel, McCalla & Brown, Tom was an Assistant District Attorney and a partner at Huckaby, Fleming & Frailey. At Frailey, Tom practices in all facets of tort litigation, focusing on complex tort and commercial litigation, as well as products liability, auto liability, oil and gas litigation, premises liability, bad faith, and insurance defense and coverage litigation.

Tom has long been an active Federation member and Officer. He served the Federation as Secretary-Treasurer and President-Elect, was Chair of the Projects and Objectives Committee, Program Chair of the Trial Masters Program, General Convention Chair, Convention Program Chair, Chair of the Premises Liability Section, Chair of the Ethics Section, and a Director on the Board of Directors. Tom also served as President, Vice President, a member of the Board of Directors of the Oklahoma Association of Defense Counsel, and served as the Chair of the Insurance Section of the Oklahoma Bar Association. He has served as state representative for Defense Research Institute and has received the Defense Research Institute's Exceptional Performance Award. Tom is a member of the Order of the Barristers, a recipient of the Maurice Merrill Golden Quill Award for his outstanding published article in the Oklahoma Bar Journal. He speaks regularly on topics of litigation, trial practice, ethics, premises liability, and insurance coverage to various legal organizations, trade groups, and companies. Tom has served as a Regent on the Board of Regents for the University of Sciences and Arts of Oklahoma (1997-2004), and currently serves on the Board of the USAO Foundation.

The Federation of Defense & Corporate Counsel (FDCC), composed of recognized leaders in the legal community who have achieved professional distinction, is dedicated to promoting knowledge, fellowship, and professionalism of its members as they pursue the course of a balanced justice system and represent those in need of a defense in civil lawsuits. FDCC membership is by invitation only following a peer review selection process. The FDCC has approximately 1,400 members including lawyers in private practice, corporate counsel, risk managers and insurance claims executives from the United States, Puerto Rico, Canada, Mexico, Bermuda, Australia, Europe, the Middle East and Asia.

COMMITTEES

Membership Committee

William H. Staples
National Membership Chairperson

David W. Zizik
Northeast Region
(ME, NH, VT, MA, CT, RI, NY)

Jennifer Lee Parrish
Mid-Atlantic Region
(PA, NJ, DE, DC, WV, VA, MD)

Gerald W. Weedon
Southeast Region
(NC, SC, GA, FL, AL, TN, MS, PR)

F. Daniel Balmert
North Central Region
(KY, OH, MI, IL, IN, MO)

Douglas M. Johnson
Midwest Region
(MN, WI, SD, NE, IA, KS)

Katherine Venti
Mountain Region
(WY, MT, ID, CO, UT, ND)

Barry N. Beck
Southwest Region
(TX, OK, NM, AZ, AR, LA)

Wayne H. Maire
West Region
(CA, OR, WA, NV, HI, AK)

Morris A. Chochla
Northern Region - East
(Canada: ON, QC, NB, NL, NS, NT, NU, PE, YT)

Leon Beukman
Northern Region - West
(Canada: AB, BC, SK, MB)

2010 Meeting Committee

William H. Staples
Chairperson

Annual Meeting Marketing Committee**Molly Hood Craig***Co-Chairperson***David W. Zizik***Co-Chairperson*

Lori Berke
 John R. Clifford
 A. Johnson Cox
 J. Campbell Helton
 Matthew S. Hendricks
 John D. Hudson, Jr.
 Gino Marchetti, Jr.
 James F. Ryan
 Thomas A. Sandenaw, Jr.
 Peggy L. Schultz
 David K. Simkins
 Cathryn Spaulding
 John T. Lay
 Bruce L. Walker
 Jimmy E. White
 David W. Zizik

Contract Review Committee**John R. Clifford***Chairperson*

Thomas P. Burke, II
 Molly Hood Craig
 Stephen R. Crislip
 David W. Zizik

Diversity Committee**Molly Hood Craig***Chairperson*

Denise M. Anderson
 Morris A. Chochla
 Linda J. Hay
 Matthew S. Hendricks
 Gail M. Kelly
 Karen L. Kendall
 Chauntis T. Jenkins
 Anne M. Oldenburg
 Frederick Richards, III
 Jose I. Rojas
 Steven V. Schlitz
 William H. Staples
 George B. Wilkinson

Internet and Techology Committee**Cathryn Spaulding***Chairperson***David W. Zizik***Co-Chairperson*

Scott E. Blinks
 Joseph J. Bosick
 Troy A. Bozarth
 Thomas P. Burke, II
 Gary J. Clendening
 Philip C. Graham
 Glenn S. Morgan
 Russel H. Roberts
 William H. Staples
 Robert M. Tyner, Jr.
 George M. Walker

Long Range Strategic Planning Committee**Stephen R. Pennell***Chairperson***Mandatory CLE Compliance Committee****Kevin F. Amatuzio***Chairperson*

Scott E. Blinks
 John R. Brown
 Steven H. Gurnee
 James D. Harris, Jr.
 Steven C. Mitchell
 Vincent R.K. Orchard
 Thomas A. Sandenaw, Jr.
 Gay L. Tedder
 James F. Waltz

Marketing Committee**Edward L. Birk***Chairperson*

J. Victor Flanagan
 Thomas J. Hurney, Jr.
 Stephen D. Jones
 Michael A. Montgomery

National Legal Issues Committee**Thomas J. Hurney, Jr.***Chairperson*

Michael F. Aylward
 Edward L. Birk
 Matthew W. Carlson
 Bruce Keplinger
 Michael C. Cronlund
 William J. Powell
 Russell H. Roberts

New Generation Committee**Stephen R. Pennell***Chairperson*

Denise M. Anderson
 William B. Alverson, Jr.
 Adrienne L. Baumgartner
 Leon L. Beukman
 Edward L. Birk
 Richmond M. Enochs
 Beth R. Fleishman
 Stephen J. Heine
 Timothy G. Kerrigan
 Robert W. Murnane
 Jennifer Lee Parrish
 J. Burruss "Buzzy" Riis
 Steven S. Tervooren
 Robert M. Tyner, Jr.
 Bruce L. Walker
 David W. Zizik

Program and CLE Committee**George M. Walker***Chairperson*

Steven H. Gurnee
 Thomas J. Hurney, Jr.
 Philip A. Werner

Publications Committee**Linda J. Hay***Chairperson*

Adrienne L. Baumgartner
 Richard B. Collins
 Patrick G. Cullen
 James D. Harris, Jr.
 Stephen J. Heine
 Steven C. Mitchell
 Steven V. Schlitz
 Jimmy E. White
 Robert N. Webner

Spouses Committee**Eileen Ryan***Chairperson*

Karen A. Baker
 Susan Balmert
 Holly Broom
 Anne Jennings
 Jennifer Schlitz
 Donna Tait

Site Selection Committee**2013 Convention****Stephen R. Crislip***Chairperson***2014 Convention****John R. Clifford***Chairperson***2015 Convention****Kevin J. Kelly***Chairperson*

**M
E
M
B
E
R
S
H
I
P

N
O
M
I
N
A
T
I
O
N**

I would like to nominate _____
(proposed member's name)

for (Prime)(Associate) membership in the Association of Defense Trial Attorneys (ADTA). Please send an application to _____
(name of applicant)

Firm _____

at _____
(city) (state) (zip code)

Office telephone _____ Office Fax _____

Year admitted to practice in my state _____ Email _____

Name of Member (Print) Signature of Member

Name of applicant's spouse (if available) _____

Home Address (if available) _____

Return to: **William H. Staples, Suite 800, 2033 N. Main Street, P. O. Box 8035, Walnut Creek, CA 94596-8035**

Telephone: (925) 930-6600

Fax: (925) 930-6620

Email: wstaples@archernorris.com

Membership Requirements:

A trial lawyer doing principally civil defense work in insurance and self-insurance activities, with more than five (5) years defense trial experience is eligible.

Prime Members: The first lawyer member from a firm is the prime member. There can only be one Prime Member from any town, city or metropolitan area of less than a million population. One additional Prime Member is allowed for each additional one million population, or portion thereof, for a city or metropolitan area.

Association Member: Partners or associates of a Prime Member are eligible and encouraged for membership as Associate Members, at the will of the Prime Member.

PRESORTED
STANDARD
U.S. POSTAGE PAID
PEORIA, IL
PERMIT NO. 6000

SUITE 450, 221 NORTH LASALLE
CHICAGO, IL 60601

THE ASSOCIATION PRESS