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The Voice

February 13, 2019 Volume 18, Issue 6

This Week's Feature

"I Want My Benefits, and I Want Them Now!" Sixth Circuit Denies Insurance Agents Employee Status Under ERISA: Agreements and Financial Structure Carry the Day

By Paul A. Wilhelm

Fresh upon the heels of the National Labor Relations Board (NLRB) independent-contractor decision in *SuperShuttle DFW* (January 25, 2019), in which the board repudiated its own 2014 test (in *FedEx Home Delivery*, finding employees nearly everywhere) and returned to the "common law agency" test, the Sixth Circuit has addressed independent-contractor status in the ERISA context, finding that insurance agents for American Family Insurance Company (American Family) were properly classified as independent contractors. *Jammal v. Am. Family Ins. Co.*, No. 17-4125, 2019 WL 348716, --- F.3d ---- (6th Cir. Jan. 29, 2019).

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Upcoming Seminars

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- Medical Liability and Health Care Law, March 20–22, 2019
- Trial Skills and Damages, March 20–22, 2019
- Life, Health, Disability and ERISA, April 3–5, 2019
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- Construction Law, April 10–12, 2019
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- Counseling Drug and Medical Device Companies on Risk Prevention Strategies, March 6, 2019, 12:00pm–1:30pm
- Challenging Plaintiff's Use of Federal Regulations to Bolster Negligence Claims, March 13, 2019, 12:00pm–1:00pm
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Quote of the Week

> "The will to win, the desire to succeed, the urge to reach your full potential ... these are the keys that will unlock the door to personal excellence."

Eddie Robinson (February 13, 1919–April 3, 2007)

This Week's Feature

"I Want My Benefits, and I Want Them Now!" Sixth Circuit Denies Insurance Agents Employee Status Under ERISA: Agreements and Financial Structure Carry the Day

By Paul A. Wilhelm

Fresh upon the heels of the National Labor Relations Board (NLRB) independent-contractor decision in *SuperShuttle DFW* (January 25, 2019), in which the board repudiated its own 2014 test (in *FedEx Home Delivery*, finding employees nearly everywhere) and returned to the "common law agency" test, the Sixth Circuit has addressed independent-contractor status in the ERISA context, finding that insurance agents for American Family Insurance Company (American Family) were properly classified as independent contractors. *Jammal v. Am. Family Ins. Co.*, No. 17-4125, 2019 WL 348716, --- F.3d ---- (6th Cir. Jan. 29, 2019).

ERISA doesn't directly cover independent contractors. The statute itself governs benefits provided by most employers to present or former employees. ERISA gives enforcement rights to "participants" and "beneficiaries," and the term "participant" means "any employee or former employee of an employer… who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer… or whose beneficiaries may be eligible to receive any such benefit." 29 U.S.C. § 1002(7). Thus, independent contractors cannot be eligible as plan participants under ERISA and cannot prevail on any ERISA claim in the capacity of a plan participant.

Against this backdrop, present and former agents of American Family (its primary sales force) who were classified as independent contractors sued in Ohio federal court, claiming that they were misclassified. They sought coverage under numerous employee benefit plans of the company, including the company's 401(k) plan and its group life, health, dental, and disability plans.

In this major challenge to industry practice, the plaintiffs were certified as a class (about 7,200 present and former agents), and after a twelve-day trial, the district court ruled that they had been misclassified for purposes of ERISA. On interlocutory appeal, a 2–1 panel reversed and remanded, finding the agents were properly classified as independent contractors rather than employees.

The Test and Decision

Each side agreed that the applicable test was the Supreme Court's "*Darden* factors." *See Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318 (1992) (finding ERISA's "nominal definition of 'employee'" is "completely circular and explains nothing," and applying a multi-factor common law test incorporating traditional agency law principles). The *Darden* factors are as follows:

> the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.

See id. at 323–24; *Jammal*, 2019 WL 348716, at *4.

In reversing the district court, the Sixth Circuit "corrected" the district court as pertained to two of these factors and then emphasized three principles.

First, the court found that the "skill required of an agent" inquiry was to ask not whether the skill was "high" or "low" upon "hire" but whether it was separate from the business and could be learned elsewhere. The court found that the underlying skill was a general one but that the sale of insurance was still a "highly specialized field" and it required "considerable training, education and skill." American Family's general preferences apparently included bringing in potential agents who were untrained, but this preference did not change the fact that the skill ultimately needed was an independent discipline that could be learned elsewhere.

Second, the court found that the American Family agents had primary authority over hiring and paying their staff,

despite the fact that American Family apparently imposed certain qualifications and restrictions and had the right to fire any "who did not live up to the American Family Code of Conduct." Still, applying the language from *Darden* closely, the court emphasized the agents' "role in hiring and paying assistants" and found this factor weighed in favor of independent-contractor status.

The court then emphasized three principles.

As for the first principle, control and supervision matter less in the ERISA analysis. The court acknowledged that the central focus of the *Darden* factors is the "right to control the manner and means by which the product is accomplished," but the court noted that this analysis involves application of the many factors, and control is less important in ERISA cases, in which traditionally the issue is whether the entity "has assumed responsibility for a person's pension status." 2019 WL 348716, at *7.

Second, the "financial structure" matters more. The Sixth Circuit thus held, "the *financial structure* of the company-agent relationship guides the inquiry." *Id.* (emphasis in original). For example, agents were responsible to invest in their own offices and instrumentalities, pay rent, work out of their own offices, earn commissions on sales, did not receive employee benefits, and were responsible to pay their own taxes. The court found that these facts all weighed in favor of independent-contractor status and should be emphasized.

Third, express agreements still matter. The court next emphasized that independent-contractor agreements matter significantly. The court held, "the lower court should have also given greater weight to the parties' express agreement." *Id.* (even "great weight"). The court cited agreement from other circuits, showing independent-contractor agreements are "strong evidence" of that status. Id. (citing *Brown v. J. Kaz., Inc.*, 581 F.3d 175, 181 (3d Cir. 2009*); Schwieger v. Farm Bureau Ins. Co. of Neb.,* 207 F.3d 480, 487 (8th Cir. 2000)). This interpretation rejects the approach taken by much of the prior executive branch that such agreements should be disregarded.

Bottom Line

While this decision reaffirmed previous holdings that insurance agents were properly classified as independent contractors at least for purposes of ERISA, the victory for the company was a narrow one obtained at great expense. Most ERISA benefits are voluntary and are restricted to employees as participants, but opening up those plans to a large army of individuals classified as independent contractors could cause not only extreme expense but also chaos and instability for existing plan participants. Having well-written independent-contractor agreements, which accurately reflect the financial structure of the relationship, and granting the proper level of control to the individual will help insulate the independent-contractor relationship from a successful challenge.

Paul A. Wilhelm is a member of the DRI Employment and Labor Law Committee and the DRI Life, Health and Disability/ERISA Committee. He is a member with the law firm Clark Hill PLC in Detroit, where he represents employers, plan sponsors, insurers, and service providers in ERISA and other benefits litigation. He also represents employers in employment litigation and

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.

Brendan Doherty and Shannon Ramirez


On January 17, 2019, DRI members Brendan Doherty and Shannon Ramirez, of **Gieger, Laborde & Laperouse, LLC**, secured a defense jury verdict in Brazoria County, Texas, before the Honorable Justin Gilbert. The plaintiff, an employee of an oilfield cementing company, sustained a complex arm fracture as well as a rotator cuff injury, both of which required surgical repair. Plaintiff further claimed that he sustained a traumatic brain injury, with permanent residual symptoms. Plaintiff claimed that the injuries were caused by negligence on the part of the defendant's forklift operator, who allegedly dropped a 600LB cementing head on the plaintiff, causing him to fall out of a pickup truck. Following a four-day trial, the jury deliberated for approximately 2.5 hours before returning a verdict of no liability on the part of the defendant.

Larry Rocheford and Hannah Felix


DRI member Larry Rocheford of **Jardine, Logan, & O'Brien, PLLP** in Lake Elmo, MN www.jlolaw.com, along with then associate Hannah Felix, now employed by the League of Minnesota Cities, successfully obtained summary judgment dismissing plaintiff's claims with prejudice in *Ekblad v. Indep. Sch. Dist. No. 625*, CV 16-834(DSD/SER), 2017 WL 2303964 (D. Minn. May 25, 2017), *aff'd*, 744 Fed. Appx. 325 (8th Cir. 2018). In *Ekblad*, Plaintiff was a teacher who allegedly sustained a traumatic brain injury and orthopedic injuries while breaking up a lunch room fight between students at the Saint Paul Public School District's (SPPS) Central High School. While breaking up the fight, one of the students turned on the teacher and physically assaulted him. Josh Verges, Central High teacher in wake of student attack 'It's like I'm watching my life as a movie', Twin Cities Pioneer Press (Apr. 27, 2016). The Plaintiff sued the SPPS, the superintendent, and the assistant superintendent claiming negligence, negligent supervision, gross negligence (attempting to take the case out of the exclusive remedy provisions of Minnesota's Workers' Compensation Act) and asserted a 28 U.S.C. §1983 Civil Rights claim. The defense removed the case to federal court. After the close of discovery, all Defendants moved for summary judgment to dismiss the plaintiff's entire case with prejudice, arguing the exclusivity provision of the Minnesota Workers' Compensation scheme barred Plaintiff's civil claims. If not barred, the SPPS and its employees were entitled to statutory discretionary immunity, official immunity, vicarious official immunity and that the claim never rose to the level of a civil rights claim. Plaintiff argued the assault was motivated by racial animus because the student called him "white-ass." The United Stated District Court for the District of Minnesota agreed with the defense and dismissed Plaintiff's claims. The Eighth Circuit Court of Appeals affirmed, holding the exclusivity provision of the Minnesota Workers' Compensation scheme barred Plaintiff's claims. The Eighth Circuit noted that, despite the fact the student called Plaintiff "white-ass," he also called him a teacher. Such was sufficient to establish Plaintiff's employment played a causal role in the assault such that the exclusivity provision barred Plaintiff's claims.

Loren Young and Thomas Maroney


DRI members Loren Young and Thomas Maroney of **Lincoln, Gustafson & Cercos** received a defense verdict in an action where a Plaintiff was seeking recovery of over $12 million in damages in a premises liability action.

The action involved an eighty year old Plaintiff who rented a mobility scooter from the defendant to use to navigate throughout the property. While using the mobility scooter, Plaintiff struck a table located in a food establishment inside the premises, tipped the scooter over and fell to the ground sustaining a broken femur. Plaintiff was transported to a local hospital where she received treatment, surgery on the broken leg, and two days later sustained a stroke. Plaintiff alleged that the stroke was proximately caused by the fall and broken leg/surgery.

Plaintiff asserted that the Property was liability because they failed to property educated, train, and warn Plaintiff

regarding the scooter's controls and ability and susceptibility to tip over. Plaintiff also asserted the restaurant did not provide "an accessible route" in accordance with the Americans with Disabilities Act ("ADA"). Plaintiff alleged the restaurant's moveable furnishings, including tables and chairs, created a barrier which obstructed the ADA accessible route and subsequently made it difficult to driver the scooter while in the restaurant.

During the two week trial, Plaintiff presented expert testimony by neurologist Dr. Leo Germin and presented significant future medical damages through life care planning expert Sarah Lustig, but eventually Plaintiff decided to seek damages for past and future pain and suffering only. The tactic of presenting damages solely related to pain and suffering has been trending in this jurisdiction for soft tissue claims that do not have significant medical specials. However, this tactic has not been generally used in cases where medical specials are in excess of $500,000 as it was in this matter.

Defense expert Michelle Robbins presented evidence that the ADA requirements for "an accessible route" was satisfied by the premises owner and the addition of movable tables and chairs in the area made the area able to accommodate various types of needs such as wheelchairs and mobility scooters. Defense neurologist Dr. Clifford Segil presented a well-organized summary of the Plaintiff's medical history of ischemic attacks, mini-strokes and full strokes prior to the incident, which were ongoing at the time of the incident. Dr. Segil also demonstrated that the current conditions complained of by Plaintiff were shown and treated by medical doctor during the months and years before the subject incident.

After two weeks of trial and a day of deliberations, the jury returned a defense verdict in favor of the Defense and against Plaintiff. The jury agreed with the defense that the Defendant provided an ADA accessible route, it was not obstructed and did not play a role in the incident. Further, the jury could not draw a causal connection between the fall and the stroke she sustained in the hospital.

Mr. Young is the managing partner, and Mr. Maroney an associate, of Lincoln, Gustafson & Cercos in Las Vegas.

The 2018 Farm Bill

Baby Steps in a Victory for Industrial Hemp and the CBD Industry

By Christopher Strunk and Mackenzie Schoonmaker


For the first time since the passage of the Controlled Substances Act[1] (CSA) in 1970, it is legal at the federal level to grow, possess, and market certain types of products derived from a cannabis sativa plant. Under the landmark Agricultural Improvement Act of 2018 (commonly known as the Farm Bill), which went into effect January 1, 2019, the U.S. Department of Agriculture (USDA) will regulate industrial hemp[2] and the cannabidiol (CBD) derived from it, removing the plant from Schedule I prohibition. Section 12619 of the Farm Bill also removes certain hemp-derived products from Schedule I status under the CSA.

Though the Farm Bill represents a significant step forward for the industry, strict regulation makes clear this action is a "baby step." For example, the Farm Bill authorizes CBD only to the extent that it is contained in hemp produced in a manner consistent with the Farm Bill and other Federal and state regulations. Further, businesses looking to tout the health benefits of hemp-derived CBD by marketing CBD-containing products will find significant roadblocks imposed by the U.S. Food and Drug Administration (FDA). Indeed, following the passage of the Farm Bill, the FDA issued a press announcement[3] clarifying that FDA currently considers CBD a drug that must go through the FDA approval process, and an illegal food product absent further FDA approval.[4] The FDA sent a strong signal that it will take enforcement action against companies illegally selling hemp-derived products that are being marketed in violation of the FDA's authorities. The Farm Bill also gave states wide latitude in regulating hemp within their borders, and states like California have barred the use of CBD in "infused" foods and alcohol products.

Regardless, the Farm Bill paves the way for marketing and sale of many hemp-derived products, even in food products. For example, the FDA concurred[5] in Fresh Hemp Food's conclusion[6] that hulled hemp seeds, hemp seed protein powder and hemp seed oil are "Generally Recognized As Safe" (GRAS) in response to the company's GRAS notices, though FDA noted that these products contain "only trace amounts of THC and CBD." Non-food products, such as hemp-derived CBD creams, are already in wide distribution.

Hemp's new legal status also represents a new frontier in applicable environmental laws, including under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). To date, the U.S. Environmental Protection Agency (USEPA) has not registered any pesticides for use on cannabis as a result of the historic Federal prohibition. With the passage of the Farm Bill, however, EPA may now consider approving applications to register pesticides for use on hemp under FIFRA and any related petitions for tolerance or exemptions for tolerance as needed for food use under the Federal Food, Drug and Cosmetic Act (FFDCA).

The de-scheduling of industrial hemp in the 2018 Farm Bill is a significant win for industrial hemp and the individuals and business that utilize it, but it is just the first step. The ability of industrial hemp businesses to adapt to rapidly evolving state and Federal regulations will be critical to developing—and maintaining—a robust business.

Christopher D. Strunk is Of Counsel at Beveridge & Diamond P.C. in San Francisco, where his practice focuses on environmental and toxic tort litigation and counseling. He has been representing clients in the industrial hemp/

1 21 U.S.C. § 801 *et seq.*

2 Industrial hemp is a distinct plant in the cannabis species which is characterized by a tall, skinny appearance and low levels of tetrahydrocannabibol (THC), no more than 0.3 percent by dry weight. *See* Farm Bill Sec. 10113 (amending 7 U.S.C. 1621 *et seq.*).

3 https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm628988.htm

4 One such example is FDA's June 2018 approval of a pharmaceutical grade CBD product for treatment of epilepsy, Epidiolex. It is classified as a Schedule V substance, and is currently available by prescription in all 50 states. *See* https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm611046.htm.

5 https://www.fda.gov/Food/NewsEvents/ConstituentUpdates/ucm628910.htm

6 https://www.fda.gov/downloads/Food/IngredientsPackagingLabeling/GRAS/NoticeInventory/UCM625534.pdf

cannabis sphere for nearly five years, assisting them in complying with state environmental laws as well as in high-stakes product liability litigation. He has published on cannabis issues nationally and will be addressing environmental issues at the upcoming DRI Cannabis Law Seminar in Washington, D.C., on May 15, 2019.

Mackenzie S. Schoonmaker is a Principal at Beveridge & Diamond, P.C. in New York City, where she focuses on both litigation and regulatory matters arising under FIFRA, the Clean Water Act, and related environmental laws. Mackenzie helps a variety of clients, ranging from large to small pesticide and biotechnology companies to governmental and non-profit entities, navigate and enforce the detailed framework of pesticide and water laws nationwide. In addition to her legal work, Mackenzie is a founding member of the National Association of Women Lawyers Energy & Environmental Affinity Group and a founding member and co-chair of her firm's Women's Initiative.

Follow Laurel Road's Guide on How to Refinance Your Student Loans

For many years, those that borrowed money for student loans (including DRI members) had no way to improve their interest rates or repayment terms. That is until now. It is now time for DRI members to take advantage of Laurel Road student loan refinancing. Student loan refinancing enables borrowers to pay off their original student loans and obtain a new loan with different repayment terms and a lower interest rate. **Are you ready to get started?** Click here to find out how Laurel Road can get you on the road to savings today.

Connect with Your Colleagues Through DRI Circles

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

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

- Added chat functionality within a business referral
- Added functionality to broadcast a message within a group
- Increased circles limit to 250 participants
- Videoconferencing

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

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#DRICares Builds 200 Valentine Boxes at the January Leadership Conference

By Melissa Roeder, Chair of the DRI Philanthropic Activities Committee

During the annual DRI Leadership Conference in Chicago last month, DRI, SLDO, and international leaders assembled 200 valentine boxes to be donated to children hospital wings and nursing homes. These bright red boxes filled with games, pens, stickers, finger puppets, and fun-flavored lip balms will brighten the day of many on February 14, 2019. This project is just one of many that #DRICares is committed to. DRI is committed to the importance of public service projects.

Valentine Card Writing Campaign

From Betsy Czerwinski of Great American Insurance Company: Cincinnati Children's Hospital is giving area residents an opportunity to brighten a patient's day with a Valentine. Click here for more information about how you can send a Valentine's card to a child in a Children's Hospital over this candy-giving holiday filled with hearts and cupids.

Promote Your Service Projects

In 2018, #DRICares organized, assisted, or promoted 33 public service projects (its original goal was 20 projects). The 2019 goal is 52 projects to overage a project a week. #DRICares has a committee ready and willing to assist each DRI substantive law committee, state and local defense organization, international defense organizations, and law firms in putting together or participating in public service projects. If your SLC, SLDO, or law firm is involved in any public service project in 2019, or wants ideas of assistance, please send your request or summary of your projects (with photos) to mroeder@foleymansfield.com or Rebecca.Nickelson@heplerbroom.com. DRI will highlight public service project every Wednesday in *The Voice*.

DRI Cares

LegalPoint

Building Products: Emerging Liabilities and Large Claims in the Building Products World

Dangerous and damaging product liability lawsuits are not solely for consumer product manufacturers or talc or other high profile defendants. They can take down the most storied business, and render the best-designed product in the world defective in the eyes of a jury. Building product companies are no exception. And whether the allegation is one of strict product liability or one of general negligence, a lawsuit with sympathetic plaintiffs or devastatingly ruined property—not to mention a string of lawsuits with class action potential—could signal the end of the road for a defendant.

Please take advantage of one of the many offerings that DRI LegalPoint™ has to offer and read Building Products: Emerging Liabilities and Large Claims in the Building Products World by Matthew J. Kelly, Jr., with AIG's Client Risk Solutions. Mr. Kelly works in-house and with clients to address existing and potential claims and existing and emerging loss drivers, particularly those related to litigation exposures.

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

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

On-Demand

The ALI Restatement on Liability Insurance—What You Need to Know (Part 2)

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

Overview of the major coverage issues addressed in the recently approved ALI Restatement on liability insurance, which took almost a decade to finalize involving significant drafts and revisions to complete based on input from both the carrier and policyholder bars.

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

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

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

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

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

Trial Skills and Damages, March 20–22, 2019

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

Life, Health, Disability and ERISA, April 3–5, 2019

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

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

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

Construction Law, April 10–12, 2019

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

Business Litigation Super Conference, May 8–10, 2019

Top in-house counsel, judges, and attorneys from across the country will meet in Austin, Texas—the Live Music Capital—for this one-of-a-kind seminar. Along with stimulating lectures, this seminar offers marvelous opportunities to network with preeminent attorneys and in-house counsel and experience what makes Austin one of the top cities in which to live. Moreover, the seminar has focused breakouts in the areas of class actions, cybersecurity/data breach, and government enforcement. In addition, DRI's Intellectual Property Litigation Committee is hosting its seminar at the same time in adjacent rooms, and attendees are free to attend presentations in either seminar. Register now for this "can't miss" event for any business litigator. Click here to view the brochure and to register.

Upcoming Webinars

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

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

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

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

Hot Topics in Public Utility Litigation, March 28, 2019, 12:00pm–1:00pm

This webinar will explore some of the most pressing litigation issues facing public utilities today. Attendees will hear from seasoned litigators regarding the trespassing/attractive nuisance and post-OSHA toxic tort cases that public utilities are currently facing. The discussion will include how these cases are evolving, key discovery and strategic considerations public utilities and their outside counsel must make, and best practices for managing these types of risk. Further, you will hear directly from in-house litigators at public utilities on how they view litigation risk and costs and how their outside counsel can become better partners with public utilities to control costs and manage risk. Click here to register.

Colorado

State Membership Chair and State Representative

Tanner J. Walls, Associate, Messner Reeves LLP

Areas of Practice: Commercial Litigation, Professional Liability, Product Liability

DRI member for 5 years.

Tanner's experience with DRI: "I became involved with DRI while chairing the new lawyer committee for the Colorado Defense Lawyer's Association (Colorado's SLDO) and the DRI Young Lawyers Conference was held in Denver. Since then I continue to gain an appreciation for the value the organization offers to its members through substantive law committees, the resources for SLDOs and the comradery and business generation that DRI members provide to each other across the country."

Fun Fact: "When I am not practicing law (rarely) I enjoy backcountry snowboarding and skiing to remote huts in Colorado's 10th Mountain Division hut system."

New Member Spotlight

Emily Dodane, Faegre Baker Daniels

Emily Dodane is an associate with Faegre Baker Daniels in Indianapolis, Indiana, and a graduate of the University of North Carolina School of Law. She works with the product liability group to counsel on product regulatory compliance and defend product liability and mass tort litigation.

Ms. Dodane uses her firsthand experience in civil courts and with in-house counsel to inform her work for clients. She is a former judicial extern of the North Carolina Business Court and judicial intern of the United States Bankruptcy Court for the Southern District of Indiana. During law school, she also externed in the in-house legal department of the pharmaceutical maker Chiesi USA.

Before her legal career, Ms. Dodane was a technology consultant with Deloitte Consulting in Washington, D.C., where she worked on financial management software implementations at various federal government agencies. She also spent two years teaching elementary reading in Baltimore, Maryland, as a member of Teach for America.

Ms. Dodane was admitted to the Indiana Bar in October 2018.

Quote of the Week

"The will to win, the desire to succeed, the urge to reach your full potential ... these are the keys that will unlock the door to personal excellence."

Eddie Robinson (February 13, 1919–April 3, 2007)