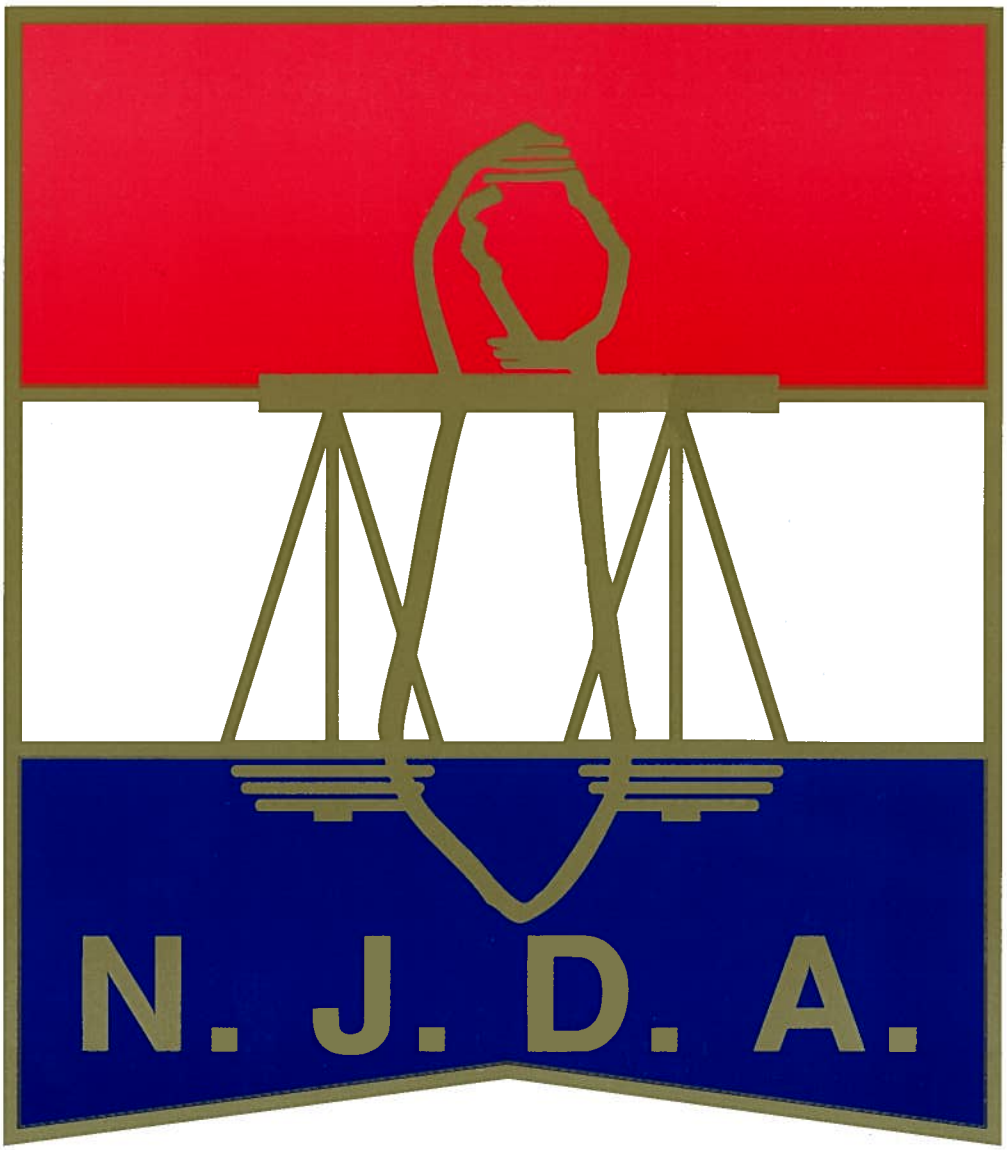
VOLUME 24
ISSUE 1

New Jersey Defense

~~ A Publication of The New Jersey Defense Association ~~



inside...

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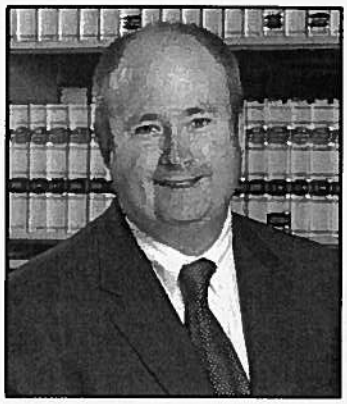


PRESIDENT'S MESSAGE

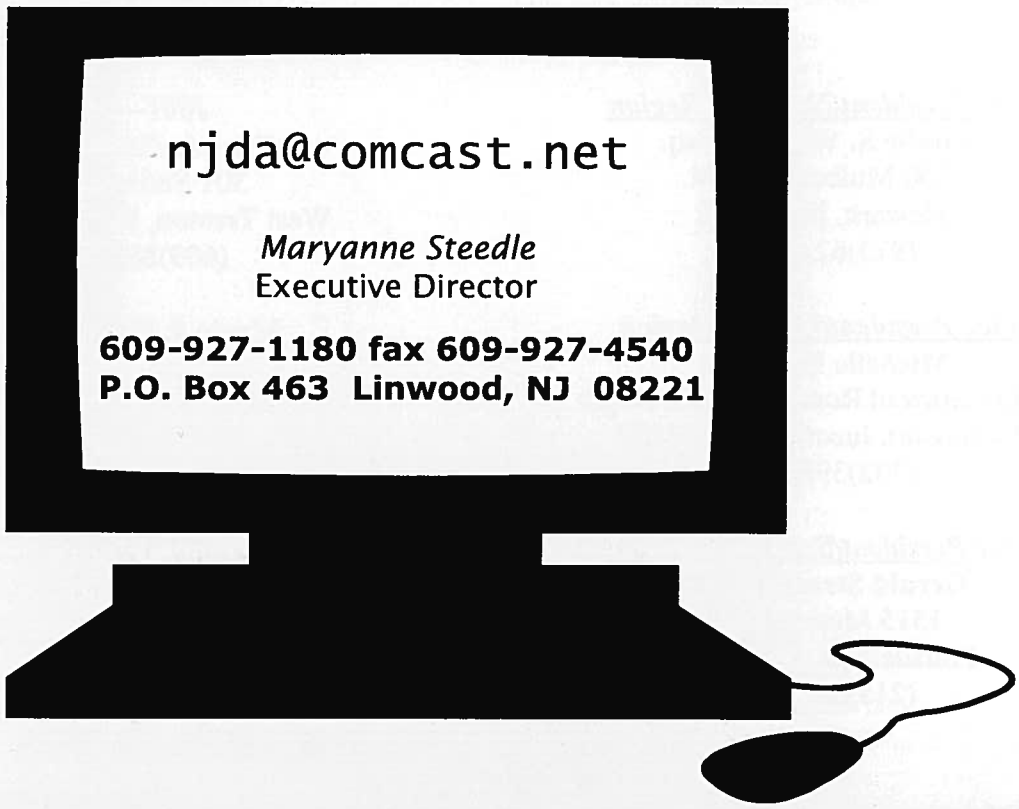
Michael J. Leegan, Esq.

As I begin my term as President of the New Jersey Defense Association, I am excited about the many events we have scheduled for the upcoming year. I encourage all members, new and old, to take advantage of the various continuing legal educational opportunities offered by the N.J.D.A., throughout the year. We recently held a joint seminar with the Insurance Council of New Jersey on September 28, 2007 on Premises Liability, Bad Faith Litigation and Admissibility of Evidence. On November 20, we will hold an insurance coverage seminar tackling various topics of insurance coverage; and in early 2008, we will hold our annual Trial College. We also are planning another seminar for 2008 and I welcome any suggestions regarding issues that would be of interest to our membership. It is my firm belief that this organization represents the best and brightest of the New Jersey Defense Bar and I encourage anyone interested in taking a more active role in our organization to contact me at your earliest convenience.

In closing, as I mentioned in our recent conversation in Maryland, I would like to thank the Chairman of the Board, Art Leyden, for the tremendous job he did as President for the 2006-2007 term. Art's dedication and leadership has made the organization better and I hope to continue in his footsteps.

I know this will be a wonderful year and I look forward to working with each of you. Thank you.

Michael Leegan



ISLAND LAW

Brian R. O'Toole, Esq.

Some fifteen years ago I read The Man to See by Evan Thomas, which is a biography of Edward Bennett Williams, the renowned trial lawyer, speaker and owner of the Washington Redskins football team and Baltimore Orioles baseball team. Some of his celebrated clients include Senator Joe McCarthey, Jimmy Hoffa, Frank Sinatra, and mob bosses Frank Costello and Sam Giancana. It seems that Williams' favorite vacation spot was Frenchman's Reef in St. Thomas, Virgin Islands. He went there frequently for long stays and also for short overnight visits, even while he was engaged in an ongoing jury trial. To ensure his relaxation he imbibed in his favorite cocktail, the Side-Car. As a matter of fact, he became one of the three famous names associated with Side-Cars. The other two are Ernest Hemingway and Auntie Mame. The drink might be described as a tart or dry whiskey sour. It is made with brandy, Triple Sec and sour mix, garnished with a lemon. (I prefer an orange slice.) Williams was described by the Frenchman's Reef staff as being their most affable guest and their biggest tipper, especially after he had consumed four or five of his beloved Side-Cars.

Following Williams' lead, my wife, Sunny, and I are frequent guests at Frenchman's Reef, having been there fourteen times in the last fifteen years. I also have developed quite a taste for the Side-Car. Sunny continues to prefer her vodka and tonics. She never really cared that much for Auntie Mame! In any event, this past year while attending the Essex-Union Bar Association meeting at Frenchman's Reef, we were treated to an overview of trial practice in the Virgin Islands by a Virgin Island trial practitioner, Pamela Lynn Colon.* She emphasizes that while it might be tempting to sign up a client who has been injured in the Caribbean, there are many pitfalls that the unwary New Jersey trial lawyer should be aware of. She stressed that to succeed in the Virgin Islands, and in the Caribbean in general, local counsel is indispensable, making all the necessary arrangements to allow State-side counsel to actually participate in the trial, in addition to being aware of local customs, adversaries and Judges. Despite obvious logistic problems, we were advised that jury verdicts in the Virgin Islands, specifically, and the Caribbean, in general, are substantial. Examples that were given of injuries and awards seem to suggest that an "Island verdict" would be several times more substantial than even our most liberal jurisdictions, such as the Bronx or Queens, New York. In contrast to this is the $75,000.00 cap on damages in a motor vehicle accident applicable in the Virgin Islands. There are also substantial differences in statute of limitations depending on your fact pattern. While the bodily injury statute is generally two years, if your client was injured on a cruise ship, frequently their contractual statutes limit the time frame to six months. This language would all be contained in the cruise contract every guest signs as part of the application process. There also may be clauses limiting recovery and requiring binding arbitration.

Ms. Colon also described how causes of action can be transferred from one island to another to increase jurisdictional monetary awards by entry into the Federal Court system and cutting down on sometimes impossible logistical and delay problems. This is especially true if your original litigation might be venued in small islands such as St. Kitts, Nevis or Trinidad & Tobago.

The ability to sue a public entity, our Title 59 statute, is also extremely difficult in the Caribbean. Their notice of intention to file a tort claim against the government must be filed within ninety days with virtually no exceptions. In some cases, judgments cannot exceed $25,000.00 against the territory, including attorney fees. Actions against health care providers must be filed within two years and when infants are involved, the statute gives them two years or until their sixth birthday, whichever is longer. In short, if you intend to sue a public or governmental entity,

(Continued on page 4)

(Continued from page 3)

just forward the case to local counsel and hope for a referral fee.

After soaking up all of this legal wisdom, I am pleased to advise that Sunny and I availed ourselves of the Reef's four restaurants, three pools, private beach, and nine cocktail lounges. Sunny continued with her vodka and tonics and I, as you might have guessed, toasted my idol, Edward Bennett Williams, with a frothy Side-Car. Incidentally, this latter activity can be engaged in with or without local counsel.

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WHAT IS A DRUG COMPANY TO DO? - PREEMPTION AND THE QUANDARY OF STATE LAW CLAIMS THAT SECOND-GUESS FDA LABELING DETERMINATIONS†

*Linda Pissott Reig, Esq. and John T. Chester, Esq. **

A year ago, the Food & Drug Administration (FDA) set off a firestorm of debate in courtrooms across the nation when it adopted new drug labeling rules. At the center of the controversy is FDA's position that federal labeling requirements have preemptive effect and courts applying state law must not second-guess FDA labeling determinations:

> FDA believes that State laws conflict with and stand as an obstacle to achievement of the full objectives and purposes of Federal law when they purport to compel a firm to include in [drug] labeling or advertising a statement that FDA has considered and found scientifically unsubstantiated.[1]

Now, one year later, a troubling trend has emerged. While several courts have agreed that state law must yield when it directly conflicts with FDA labeling determinations, other courts have refused to dismiss failure-to-warn claims on conflict preemption grounds. What is particularly startling is that failure-to-warn lawsuits have been allowed to proceed even where FDA specifically rejected including a particular risk in the drug label.

For instance, in September 2006, the court in McNellis v. Pfizer, Inc. denied a motion to dismiss plaintiff's claim that the SSRI (selective serotonin reuptake inhibitor) antidepressant Zoloft should have carried additional warnings concerning suicide – despite FDA's refusal to change the existing suicide warnings because, in the agency's considered judgment, it was scientifically unfounded at that time.[2]

Four months earlier, the opposite conclusion was reached in Colacicco v. Apotex, Inc., which also involved SSRI antidepressants. The Colacicco court appropriately dismissed plaintiff's state law failure-to-warn claims, finding that FDA "repeatedly determined that there was inadequate evidence of an association between adult use of SSRIs and suicidality."[3] The Colacicco court relied in part on an FDA amicus brief that explained the regulatory history of SSRI labeling and emphasized that labeling inconsistent with the agency's directives would have been "false and misleading" and thus contrary to law.[4]

Surprisingly, the McNellis court rejected Colacicco's holding, FDA's amicus brief, and the Preemption Preamble, and held preemption inapplicable. The effect of the McNellis ruling is that the court would permit a jury to decide that a drug company should have ignored the FDA's labeling directives and unilaterally changed the Zoloft labeling.[5]

This creates an impossible quandary. Drug companies must comply with FDA labeling directives. Such directives are based on FDA's expert scientific evaluation of a drug's risks and benefits. As FDA has articulated, to allow plaintiffs and lay juries to second-guess the agency's scientific assessment of a specific drug threatens FDA's congressionally-mandated role:

> If . . . judges and juries applying State law, were permitted to reach conclusions about the safety and effectiveness information disseminated with respect to drugs for which FDA has already made a series of regulatory determinations based on its considerable institutional expertise and comprehensive statutory authority,

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DRUG COMPANY

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the federal system for regulation of drugs would be disrupted.[6]

The Colacicco court recognized this, concluding that "it is not the function of this Court, or for a jury . . . to substitute its judgment for the FDA's" concerning drug labeling.[7] As another court applying preemption in a case involving SSRIs, Ackermann v. Wyeth Pharmaceuticals, explained, "[a]llowing each state to require different standards for drug labeling promotes confusion," and "[t]o usurp the FDA's regulation in this area offers the potential for far more harm than benefit to patients."[8]

The McNellis outcome is troubling because the court, by allowing the lawsuit to proceed, will essentially permit a jury to reject FDA's labeling mandates. The drug company is left in the untenable position of potentially paying product liability damages for failing to add stronger suicide warnings despite that FDA did not consider those warnings appropriate based on the scientific data.[9] Over many years, FDA repeatedly concluded that the scientific data did not establish that SSRI use increased the risk of suicide. In fact, the McNellis court acknowledged that in June 2003 – several months after the decedent's suicide – FDA specifically found that data on suicidality did not support any labeling change.[10] Nevertheless, the McNellis court held that preemption did not apply because it viewed FDA regulations merely as "minimum standards" that do not prohibit a manufacturer from unilaterally strengthening a warning.[11]

In essence then, drug companies are stuck in a damned-if-you-do, damned-if-you-don't quagmire, facing conflicting federal and state law requirements. This is the exact setting in which conflict preemption must apply – i.e., where it is impossible to comply with both state and federal law or where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[12]

The McNellis case is unfortunately not the only case in which a court has rejected preemption and thereby exposed a drug company to potential liability for using an FDA-mandated warning. In Jackson v. Pfizer, Inc., the plaintiff alleged that drug labeling for Zoloft and another SSRI antidepressant, Effexor, should have included additional suicidality warnings before decedent's suicide in October 2002.[13] The court acknowledged that "FDA required that the antidepressants use the exact language specified by it with regard to suicide."[14] Regardless, the Jackson court rejected preemption, following a line of cases viewing federal labeling requirements as mere minimum standards. With little analysis or explanation, the court ruled that FDA's requirements did not make it impossible for the drug company also to comply with state failure-to-warn law, nor did plaintiff's claim frustrate the purposes of the federal drug labeling scheme.[15]

The disturbing second-guessing of FDA drug labeling determinations is not limited to cases involving SSRI drugs either. For example, in Rush v. Wyeth, the plaintiff alleged that Prempro drug labeling should have included additional warnings regarding the risk of breast cancer with hormone therapy.[16] FDA evaluated the scientific data concerning hormone therapy and breast cancer, and required very specific language concerning breast cancer in the drug labeling during the relevant time period. Therefore, the drug company moved to dismiss, contending that it could not have included breast cancer warnings other than what was specifically required by FDA. Nevertheless, the Rush court – in a one-page order with no substantive analysis – rejected preemption out of hand.

Cases such as McNellis, Jackson, and Rush impose the impossible on drug companies. In each of these cases, FDA specifically considered and rejected certain warnings as scientifically unsubstantiated and required use of particular labeling. FDA-mandated labeling necessarily reflects FDA's scientific conclusions regarding the risks and benefits of a given drug. Were a drug company to ignore FDA's determinations and unilaterally change mandated drug labeling, it would violate federal law.

There can be no doubt that in those cir-

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cumstances, preemption must apply and conflicting state law must yield. Any other result permits judges and juries to second-guess FDA's "authoritative conclusions regarding the conditions under which the product can be used safely and effectively."[17] That outcome unquestionably disrupts and undermines the federal Food, Drug, and Cosmetic Act, and FDA's Congressionally-appointed authority.

The primary mission of drug companies is to research and develop therapies and cures to improve health and save lives. These purposes are defeated if drug companies can be hauled into court to defend failure-to-warn lawsuits even where FDA has specifically considered and rejected the warnings that plaintiffs allege should have been given. Such litigation requires the wasteful and unjustifiable commitment of substantial time, expense, and focus that should instead be devoted to innovation.

† This article, with minor changes, was previously published by the Washington Legal Foundation in the WLF Legal Backgrounder, Vol. 22 No. 9 (March 9, 2007), under the title "Courts' Misapplication of FDA Preemption Policy Creates Quandary for Drug Producers."

NOTES:

1 Preamble, Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products, 71 Fed. Reg. 3922, 3935 (Jan. 24, 2006) (the "Preemption Preamble").

2 *McNellis v. Pfizer, Inc.*, 2006 U.S. Dist. LEXIS 70844 (D.N.J. Sept. 26, 2006), *appeal docketed,* No. 06-8056 (3d Cir. 2006).

3 *Colacicco v. Apotex, Inc.*, 432 F. Supp. 2d. 514, 524 (E.D. Pa. 2006), *appeal docketed,* No. 06-3107 (3d Cir. Jun. 21, 2006).

4 *Id.*

5 Both *McNellis* and *Colacicco* are on appeal to the United States Court of Appeals for the Third Circuit. The appeals have been consolidated and will be heard by the same panel.

6 71 Fed. Reg. 3969; *see also id.* at 3934-35.

7 *Colacicco*, 432 F. Supp. 2d. at 530.

8 *Ackermann v. Wyeth Pharms.*, 2006 U.S. Dist. LEXIS 64499, 19, *adopted by, summary judgment granted*, 2006 U.S. Dist. LEXIS 88456 (E.D. Tex. 2006).

9 *McNellis*, 2006 U.S. Dist. LEXIS 70844, 14.

10 *Id. at 20-21.*

11 FDA, in the Preemption Preamble, directly rejects the "misunderstanding" that its regulations are merely minimum standards, noting that "additional disclosures of risk information can expose a manufacturer to liability under the [FDCA] if the additional statement is unsubstantiated or otherwise false or misleading." 71 Fed. Reg. at 3934-35.

12 *See Geier v. Am. Honda Motor Co., Inc.*, 529 U.S. 861, 873, 899 (2000).

13 *Jackson v. Pfizer, Inc.*, 432 F. Supp. 2d 964 (D. Neb. 2006).

14 *Id. at 968 (emphasis added).*

15 *Id. at 968-69.*

16 *Rush v. Wyeth*, No. 4:05-00497 (E.D. Ark. June 15, 2006).

17 *See* 71 Fed. Reg. at 3934.

* Linda Pissott Reig is a Principal and John T. Chester is Counsel at Porzio, Bromberg & Newman, P.C., a law firm with offices in Morristown, New Jersey and New York City. Ms. Reig is a member of the Pharmaceutical Marketing & Sales Compliance and Litigation Department. Mr. Chester is a member of the Product Liability and Mass Tort Litigation Department. Both are also members of the firm's Appellate Practice Group. Ms. Reig also serves as Vice President, Compliance Services of Porzio Pharmaceutical Services, a subsidiary of the law firm.

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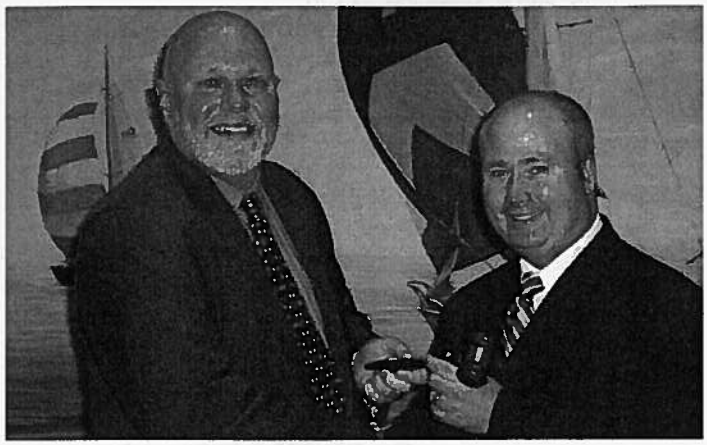


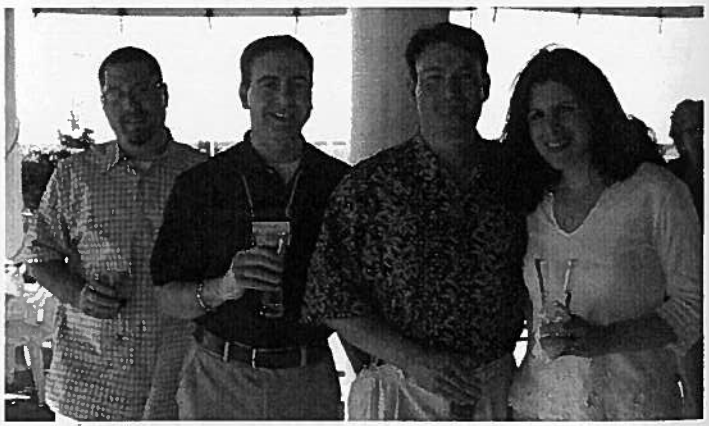
Chairman of the Board Arthur F. Leyden III presenting the gavel to President Michael J, Leegan

Chairman of the Board Arthur Leyden, President Michael Leegan, President-Elect Kevin DeCoursey, Secretary/ Treasurer Joanne Vos

Outgoing Chairman of the Board Linda Reig presenting the NJDA Service Award to Chairman Arthur Leyden

Art Leyden, Paul Capotorto, Rob Ritacco, Dawn Ritter

L to R back row Diane Sages, Patrick Sages, Carolyn Alenciewicz, Robert Alenciewicz, Michael McDonough, Bob Travasano
L to R front row Mary Madden, Tom Madden, Michael Leegan, Kim Leegan, Alix Rubin



EJ Kilpatrick, Brian Chabarek, Mark Saloman, Laurie Saloman

NJDA CONVENTION MEMORIES

DRI Representative Joseph Garvey presenting DRI Distinguished Service Award to outgoing President Arthur Leyden III

Past Presidents—Art Leyden, Steve Foley, Linda Reig, Mike Cernigliaro, Marie Carey, Roger Steedle, Chuck Hopkins, Phil Lezenby, Brian O'Toole

Liz Hopkins, Skip Roach, Roger Steedle, Betsy Kaplan, Mario Delano, Marie Carey, Michelle Delano

Joe Garvey, Linda Garvey, Kathy Van Dyke, Pete Van Dyke, Suzanne Ballou, Bob Ballou, Eleanore Rogalski

Front Row—Alan Conrad, Charleen Conrad, Kevin DeCoursey
Back Row—Greg McGroarty, Brian OToole, Sunny O'Toole, Katy O'Leary, Kevin O'Leary, Lenore DeCoursey

Michelle Hou, Michele Haas, Brian Chabarek, Linda Reig, Rich Reig

UPDATE FROM THE DIVERSITY TASK FORCE

Joanne Vos, Esq.

Since our last report, the Diversity Task Force has taken great strides towards its goals of increasing the accessibility of the NJDA to all members of the bar and increasing diversity within the organization. The past few months have been both busy and ground-breaking for the Diversity Task Force. An update on some of our most recent achievements follows.

First, The Board of Directors has approved the presentation of proposed amendments to the By-laws to the membership for a vote.** These amendments not only confirm the NJDA's commitment to diversity but also ensure the existence of a constant driving force behind its diversity goals. The initial proposal is to amend Article III of the by-laws by adding a new Section III, as follows:

> **Commitment to Diversity: The Association is committed to fostering and promoting an environment of inclusion, diversity and respect within its membership. To this end, the Association fully supports recruiting and advancing qualified members, regardless of gender, age, race, religion, national origin, sexual orientation, ethnicity, or physical or cultural differences.**

The second proposed amendment is to Article XII as follows:

> **Diversity Committee: It shall be the duty of this committee:**

A. To promote diversity throughout the Association;
B. To increase the visibility and accessibility of the Association to all minority bar associations;
C. To foster an environment of inclusion, diversity and respect amongst the membership; and
D. To support the recruiting and advancing of qualified members regardless of gender, age, race, religion, national origin, sexual orientation, ethnicity, or physical or cultural differences.

Simply stated, the second proposed amendment will establish the Diversity Committee as a standing committee with regular duties. What the Association currently has is a "task force" which implies a finite lifetime and perhaps even dissolution upon its achievement of what are otherwise considered short-term goals. The transition from Task Force to Committee will be an easy one as the Diversity Task Force has been operating essentially as a standing committee would for the past two years, attending functions and seminars, developing and implementing plans, and regularly reporting to the Board of Directors and membership.

The proposed amendments were presented to the general membership for a vote and were approved at the March 28, 2007 seminar discussed below.

Writing and developing the amendments has been a large part of the Diversity Task Force's responsibilities of late. The members of the Task Force, however, also have planned and coordinated with the Women's Law Committee of the Morris County Bar Association and the NJDA's Professional Liability and Young Lawyers' Committees to sponsor the **Challenges & Considerations for Solo Practitioners and Small Practices** seminar which was held on March 28, 2007. Special Guest Speaker, retired New Jersey Supreme Court Justice James H. Coleman presented the ethics portion of the seminar. Justice Coleman spoke at our Professional Liability & Ethics Seminar last year and was extremely well-received, encouraging participation from the audience as well as Q&A with

(Continued on page 11)

STRIDES IN DIVERSITY

(Continued from page 10)

the panel.

Catherine M. Brown (Catherine M. Brown, LLC of Morristown), William Flahive (Law Office of William P. Flahive, LLP of Lambertville), Daniel Posternock and Diana Sever (Barron Baker & Posternock, LLP of Moorestown) presented related topics regarding the following:

- Marketing Practices and Networking Resources;
- How to Start and Organize your own Practice;
- Financial Considerations;
- The Role of Technology;
- Q&A: All the questions you wanted answers to but were too afraid to ask!

The Diversity Task Force thanks our Special Guest Speaker, Justice James H. Coleman, Cate Brown, Bill Flahive, Dan Posternock, the Women's Law Committee and its Chairperson, Connie Matteo, the NJDA's Professional Liability Committee and its Vice-Chairperson, Keith Weingold, the NJDA's Young Lawyer's Committee and its Chairperson, Natalie Watson, and ICLE for making this seminar a possibility.

If you have any questions regarding the seminar, please contact Joanne Vos at Hoagland Longo Moran Dunst & Doukas: (732) 545-4717 or jvos@hoaglandlongo.com. Questions regarding the Diversity Task Force should be sent to the chair, Natalie Watson of at (973) 622-4444.

** Since the writing of this article, the proposed amendments were approved.

Calendar of Events

NJDA Insurance Coverage Seminar

Tuesday, November 20, 2007

9:00 a.m.-12:30 p.m.

Woodbridge Hilton

LIMITS ON THE INTERPRETATIONS OF MRIS

Michael J. Leegan, Esq.

For those practicing in Union County, the "Rule" of not allowing a chiropractor to testify regarding his or her interpretation of an MRI film has long been enforced. In Brun v. Cardoso, 390 N.J. Super, 409 (App. Div. 2006), the Appellate Division provided legal precedent giving teeth to the rule statewide. Relying on the New Jersey Rules of Evidence, the Appellate Division held a chiropractor is not permitted to testify regarding a radiologist's MRI interpretation, because the same would result in the admission of non-admissible hearsay by a non-testifying expert.

In Brun, plaintiff was involved in a rear-end collision with the defendant and was subject to the verbal threshold. After emergency room treatment at Saint Barnabas Medical Center, plaintiff came under the care of a chiropractor, Dr. Michael A. Corey. During the course of treatment, Dr. Corey sent plaintiff for an MRI at Union Imaging Center. The reading radiologist was Dr. Steven Meyerson, who opined that the film showed a diffuse disc bulge at L4-L5, with a small annular tear without evidence of neural compression, and an L5-S1 right paracentral herniation, mildly indenting the thecal sac and abutting the right S1 nerve root and possibly mildly displacing it posteriorly. At trial, defense counsel moved in limine to bar or limit Dr. Corey's testimony concerning the alleged disc herniation and its causal relationship to the accident. Plaintiff's counsel advised the Court that the treating neurologist, Dr. Enrique Hernandez, would not be called as a witness. The trial judge ruled that a radiologist qualified to interpret MRIs would have to be called before Dr. Corey would be permitted to testify as to the MRI findings.

To comply with the Court's ruling, plaintiff's counsel retained Dr. Howard Kessler, the owner of Union Imaging Center, to testify regarding the MRI findings. Dr. Meyerson was unavailable because he left Union Imaging in July, 2002. Ironically, Dr. Kessler's interpretation of the MRI differed from Dr. Meyerson's. Dr. Kessler opined that there was a herniation at the L4-L5 level, where Dr. Meyerson had noted a bulge.

Following voir dire of Dr. Kessler outside the presence of the jury and Dr. Kessler's testimony before the jury, the Court entertained defense counsel's motion to dismiss the case. The trial judge dismissed the action on several grounds, including that Dr. Kessler's testimony amounted to a "surprise" and greatly prejudiced the defense. Plaintiff appealed the ruling.

The Appellate Division used the case as an opportunity to clarify the longstanding issue as to whether a chiropractor may testify regarding the interpretation of an MRI film. The panel held the "interpretation of an MRI may be made only by a physician qualified to read such films..." Id. at 421. The Court made clear that the decision of not allowing Dr. Corey to testify regarding his interpretation of the MRI film was not based on his "status as a chiropractor but on the complexity of MRI interpretations." Id.

In deciding Brun, the Appellate Court rejected plaintiff's arguments that Dr. Corey be permitted to testify as to the MRI findings under either the Business Records Exception to Hearsay of N.J.R.E. 803(c)(6) or N.J.R.E. 703, Allowing Expert Testimony to be based on the Opinions of a Non-Testifying Expert. The Court rejected plaintiff's argument under the Business Records Exception by relying on State v. Matulewicz, 101 N.J. 27 (1985). In Matulewicz, the Court held that "[t]he degree of complexity of the procedures utilized in formulating the conclusions expressed in the [expert's] report", determines admissibility under the Business Records Exception. Id. at 30. An additional factor for this exception, is the opposing side's right to cross-examine the author of the report being brought into evidence. "...[M]

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edical opinions and hospital records should not be admitted under the Business Records Exception where the opponent will be deprived of an opportunity to cross-examine the declarant on a critical issue such as the basis for the diagnosis or cause of the condition in question." Nowacki v. Cmty. Med. Ctr., 279 N.J. Super. 276, 282-283. (App. Div.), certif. denied,141 N.J. 95 (1995).

Under the aforementioned case law, the Appellate Division held Dr. Meyerson's MRI report could not be admitted under the Business Records Exception rule because: 1. the "complexity" of interpreting and reading MRIs; and 2. without calling Dr. Meyerson as a witness, the defense would be deprived of an opportunity to cross-examine the author of the MRI report on the main issue of the case.

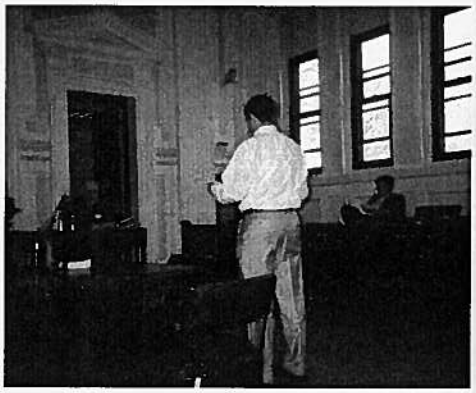
The court also rejected plaintiff's arguments under N.J.R.E., 703. Under N.J.R.E. 705, the report of a non-testifying doctor cannot, by itself, be admitted into evidence "[i]n the absence of an independent basis for admissibility." Day v. Lorenc, 296 N.J. Super. 262, 267 (App. Div. 1996). As the court already had determined that Dr. Corey was prohibited from testifying as to the MRI findings made by Dr. Meyerson, there was no "independent basis for admissibility." N.J.R.E. 703, therefore, was not applicable.

Thanks to Brun, we now have a clear explanation from the Appellate Division of the reasons for not allowing chiropractors to testify as to radiologist's interpretations of MRI films. Only those medical experts qualified to interpret MRI films will be allowed to do so at trial.

NJDA Trial College

February 12, 2007
Union County Court House
Elizabeth, NJ

Instructors: (Left to Right): Steven Isaacson, Stephen Foley, Jr., Marie Carey, Thomas Hight, Bruce Helies, Kevin DeCoursey, Joseph Garvey



YLC Summer Associate Luncheon

August 1, 2007

The Famished Frog

Workers' Compensation Committee Update

The NJDA Workers' Compensation Committee sponsored a medical lecture at the offices of Hoagland, Longo, Moran, Dunst & Doukas on Thursday, June 7, 2007, by Dr. Kenneth C. Peacock, a board certified orthopedist and founder of Laurel Evaluations, and Dr. Erin Elmore, a board certified neurologist of Essex Neurological Associates. The doctors gave an informative presentation on fibromyalgia and RSD/complex regional pain syndrome. Additionally, the Committee was able to secure one (1) medical CLE credit for lecture attendance.

The Committee hopes to present more lectures in the future.

Stephen Banks, Chair, and Michele Haas, Vice Chair

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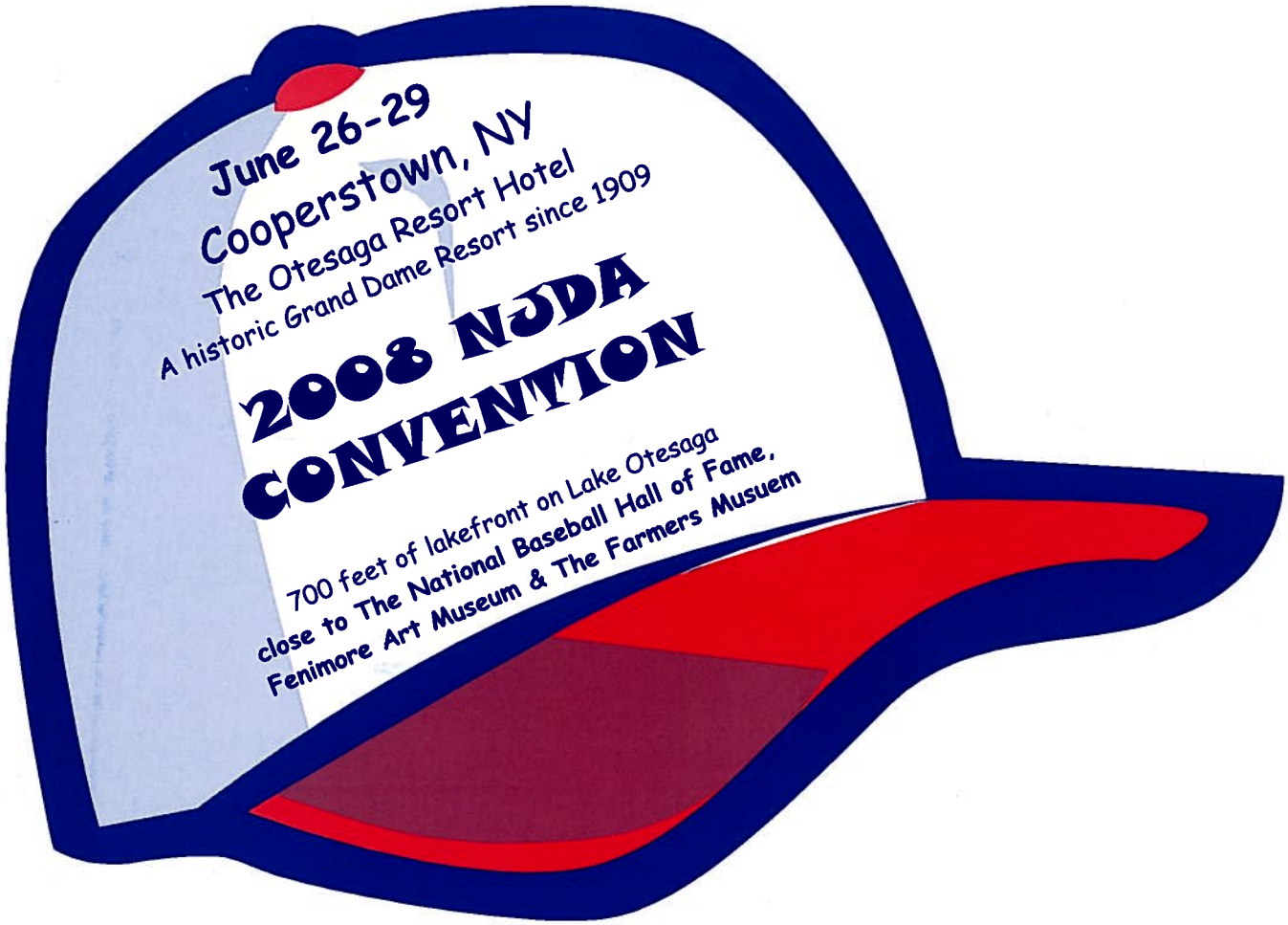

New Jersey Defense

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