THE DEFENSE LINE

A Publication From The Maryland Defense Counsel, Inc.

Fall 2005

Important Announcements

DRI Annual Meeting
October 19–23
Sheraton Chicago Hotel and Towers

See the enclosed flyer or visit **www.dri.org** for details.

Insurer-Insured Communications and the Scope of Maryland's Attorney-Client Privilege

By John Parker Sweeney and Emilia VandenBroek[1]

Maryland courts may apply the attorney-client privilege to protect certain communications between an insured and its insurance carrier. Disclosure of all or a significant part of such privileged communications may, however, risk waiver of the attorney-client privilege for all information regarding the same subject matter. To avoid an inadvertent subject matter waiver of privilege, it is essential to understand the developing law extending attorney-client privilege to insurer-insured communications. *In Cutchin v. State of Maryland*, 143 Md. App. 81 (2002), the Maryland Court of Special Appeals set forth the criteria for determining whether such insurer-insured communications are protected by the attorney-client privilege in this State.

I. The Maryland Standard: *Cutchin v. State of Maryland*

Maryland courts had not addressed the privileged nature of insured-insurer communications until the Court of Special Appeals decided *Cutchin v. State of Maryland*, 143 Md. App. 81 (2002). Although the Court held that the specific insurer-insured communication at issue was not privileged under Maryland law, it also declared that the attorney-client privilege protects insurer-insured communications if (1) "the dominant purpose of the communication was for the insured's defense" and (2) "the insured had a reasonable expectation of confidentiality." Id. at 94.

In that case, Douglas Cutchin and his friend, Tony Gardner, were in a motor vehicle that struck a tree, and Mr. Gardner died as a result. In criminal proceedings against Mr. Cutchin, the State called James St. Hill, an insurance adjuster from State Farm Insurance Company—Mr. Cutchin's insurer—to testify that he participated in a conference call with Mr. Cutchin and Mr. Cutchin's attorney a few months after the accident. During this call, Mr. St. Hill took a recorded statement from Mr. Cutchin. Mr. Cutchin contended that his statements to Mr. St. Hill during the conference call were protected by the attorney-client privilege. The Circuit Court and Court of Special Appeals both ultimately rejected Mr. Cutchin's argument, but in doing so, set forth the law governing application of the attorney-client privileged to insurer-insured communications.

II. "Broad" and "Narrow" Views of Extending the Attorney-Client Privilege to Insurer-Insured Communications

The Cutchin Court observed that scholars have grouped the standards applied by other jurisdictions into a "narrow view" and a "broad view." Id. at 91, (*discussing* John P. Ludington, Annotation, *Insured-Insurer Communications as Privileged*, 55 A.L.R. 4th 336 (1987–2004)). "Broad view" jurisdictions find that communications from an insured to its liability or indemnity insurer presumptively are privileged if they relate to an incident potentially giving rise to liability under the policy. Under the

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President's Message

As lawyers in civil practice, each of us is in some way committed to serving others—service to our clients, service to our communities, service to the legal profession. As I have ascended the ranks of MDC Board member to MDC officer and now to President, I have watched past Presidents of this organization reinforce MDC's commitment of service to its members: Chip Hill and his emphasis on expanding MDC members' opportunities and exposure within our "parent" organization, the Defense Research Institute ("DRI"); Jack Harvey and his emphasis on increasing our membership ranks throughout Maryland and thus giving all MDC members opportunities to network and share experiences on a broader scale; Scott Burns and his emphasis on reinvigorating MDC's legislative efforts and raising our profile, and thus the importance of our members' issues, with Senators and Delegates in Annapolis; Hal MacLaughlin and his emphasis on establishing a positive relationship with the Executive Branch, particularly through MDC's judicial selections process, thereby expressing MDC members' expectation of a highly qualified, diverse, and experienced bench; Peggy Ward and her emphasis on improving the day-to-day practices of MDC members by enhancing our e-mail notices and other communications, expert witness inquiry system, our website, our *Defense Line* publication and our high-quality programs; and Gardner Duvall and his emphasis on appellate advocacy on behalf of MDC members' clients, as well as pursuing MDC's Civil Justice Project, whereby MDC had a significant voice in Annapolis on issues dear to our members' clients' hearts—medical malpractice reform, enhancing expert evidentiary admissibility standards, and a more equitable post-judgment interest calculation. In 2005–06, MDC's Officers and Board members remain committed to serving our constituency—the dues-paying members of MDC—by continuing the great progress made in prior administrations, and by focusing on other areas that we believe will benefit all of us as civil defense practice litigators. Allow me to highlight a few of these:

T. Sky Woodward, Esquire

Miles & Stockbridge P.C.

Legislative Agenda

MDC's Legislative Committee is this year co-chaired by Mark Coulson and Christopher Boucher. With Mark and Chris at the helm, together with Past-President Gardner Duvall, MDC has kicked off its legislative agenda in a powerful way by hosting a fundraiser for Maryland Delegate Bobby Zirkin, who aspires to the state Senate seat being vacated by Senator Paula Hollinger. Delegate Zirkin has been, and we believe will continue to be, a valuable sounding board and advocate for MDC's legislative initiatives, including last year's Civil Justice Act. As of the drafting of this President's Message, MDC had raised more than $7,000 for Delegate Zirkin.

In addition to raising our profile with Delegate Zirkin, MDC's Legislative Committee will continue to work with Senator Sandy Rosenberg in pursuing a more equitable post-judgment interest calculation. In the asbestos litigation and legislation arena, we will focus on the cap on non-economic damages, certificates of merit, and treatment of loss of consortium claims. In this regard, we are pleased that Laura Cellucci, chair of our Products Liability and Toxic Torts Subcommittee, and Scott Burns, a past-President and now serving as our Corporate Counsel Outreach Special Project Chair, are bringing their substantive experience to bear on these issues. In January 2006, we will host our annual Legislative Dinner in Annapolis.

Judicial Selections

Under the continued leadership of John Sweeney, and with Edward J. "Bud" Brown and David O. Godwin joining him as a triple-threat of "co-chairs," MDC members continue to have the opportunity to interview prospective judicial candidates at the Circuit Court, Court of Special Appeals and Court of Appeals levels. MDC's goal is to promote a highly qualified, experienced, and diverse bench—one before whom our clients will receive fair, impartial and professional treatment. If you are interested in interviewing judicial candidates, please contact any of our chairs.

Appellate Advocacy

Continuing the great strides of last year's appellate advocacy as *amicus curiae* on the issues of *voir dire* and admissibility standards for expert testimony, MDC has committed to evaluating appellate issues brought to its attention and finding appropriate resources to support *amicus* efforts. Richard Flax and Dwight Stone are points of contact for any prospective *amicus* support; please reach out to either of them directly, to MDC's Executive Director, Kathleen Shemer, or to me. We are also pleased that Court of Special Appeals Judge Timothy Meredith has agreed to present on nuts and bolts of appellate practice at a dinner meeting later this year.

Programs/Events

Speaking of programs, Jennifer Lubinski has worked tirelessly to identify and organize educational programs for our members this year. In addition to the appellate practice presentation by Judge Meredith, U. S. Magistrate Judge Paul Grimm will speak in late September on the attorney client privilege, the work product doctrine, inadvertent disclosure, and proposed changes to the rules concerning electronic discovery, and Rule 30(b)(6) depositions and the medical review committee privilege. Other programs will cover forensic accounting and bankruptcy practice.

The Annual Meeting/Crab Feast was the first of many social events this year. On October 5th, we celebrated our history and showed our appreciation for prior leaders at our annual Past Presidents Reception on the terrace at Tydings & Rosenberg. In keeping with a tradition started last year, MDC invited sitting judges from the Circuit Courts in which our members appear most frequently, as well as the Court of Special Appeals, Court of Appeals, and the U.S. District Court, and commissioners on the Workers' Compensation Commission.

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(PRESIDENT'S MESSAGE) *Continued from page 3*

One of our two new Young Lawyers' Liaisons, Toyja Kelley (along with Nikki Nesbitt), is responsible for our continued participation in the joint MDC/MTLA Golf Tournament, held on September 29th. The Golf Tournament is a great day of golf and relationship building with our colleagues across the aisle, as well as judges who attend this event.

Publications/Communications

If you are reading this paragraph right now, then MDC is fulfilling one its primary missions—communication to members! With Alex Wright at the helm as Publications Chair, the *Defense Line* will continue to produce high-quality articles written by MDC members on timely substantive and practice-related issues; it will also highlight accomplishments of our members (if you let us know about them!). The next edition of the *Defense Line* is scheduled for publication in January 2006—it's not too early to consider an article.

Mary Malloy Dimaio has joined the Board as our Communications Chair, and she has hit the ground running by creating and implementing an e-mail alert system. Please send us your successes, or failures if a message lies therein, and we'll post them to all members through this mechanism.

DRI

We are pleased that a past-President, Peggy Ward, has been appointed as our DRI State Representative. Our first opportunity to network with DRI colleagues will be at the 2005 Annual Meeting in Chicago, from October 19–23. In April 2006, we will participate in the annual Mid-Atlantic Regional State and Local Defense Organization meeting with colleagues from the District of Columbia, Virginia, North Carolina and South Carolina.

I would be remiss if I failed to identify other members of the Board and their roles, and thank them for their continuing good works on behalf of MDC members. Past-Presidents Hal MacLaughlin and Bob Erlandson are spearheading a new committee, Executive Branch Liaison. In these roles, Hal and Bob will establish better lines of communication to County Attorneys, Baltimore City Solicitors' office, state Attorney General's office, and the Governor's office. Our Substantive Law Committee Chairs—Laura Cellucci on Products Liability/Toxic Torts, Winn Friddell on Negligence/Insurance, Jim Rothschild on Employment/Labor Law, Catherine Steiner on Professional Liability, and Ileen Ticer and Nancy Harrison on Workers Compensation—continue to bring substantive legal issues to the attention of the Board, and more importantly, other committee chairs such as Legislative, Appellate and Programs. As part of MDC's outreach, Scott Burns will implement a program to meaningfully involve in-house, corporate counsel in MDC, and Toyja Kelley and Nikki Nesbitt will work to enhance MDC's profile at the local law schools as well as reach out to newer practitioners.

And last, but not least, Gardner Duvall as Past-President, Joe Jagielski as President-Elect, Dan Moylan as Secretary, and the newest addition to the officer ranks, Kathleen Bustraan as Treasurer, make up a team of MDC officers who, along with Executive Director Kathleen Shemer, are committed to advancing the goals of MDC members and its members' clients. We are humbled by the opportunity to serve you this year.

EDITOR'S CORNER

The editors of *The Defense Line* feature a lead article from John Sweeney and Emilia VandenBroek discussing Insurer-Insured Communications and The Scope of Maryland's Attorney-Client Privilege. Michael J. Sepanik, a regular contributor, is the first contributor to the Young Lawyer's Section where he describes the most effective means to achieve Summary Judgment based on the legal doctrine of Assumption of Risk. Robert W. Goodson and Heather Austin Jones discuss the emerging field of Telemedicine and the legal issues that will arise. Finally, we include Spotlights led by an interesting article by J. Mark Coulson that outlines his successful argument to extend Workers Compensation Immunity to Supervisory Employee of Special Employers, as well as other spotlight of recent cases from the Maryland Court of Appears and Circuit Courts around the state.

The editors of *The Defense Line* want to make the readers aware of the Defense Research Institute's 2005 Annual Meeting: *The Voice of Civil Justice*, October 19 through 23 at the Sheraton Chicago Hotel and Towers. DRI is The Voice of the Defense Bar and will be devoting the theme of this year's meeting to the preservation of the civil jury trial and the civil justice system. This year's highlights include a keynote presentation by actor and former Senator Fred Thompson.

The editors continue to hope our readers find *The Defense Line* to be of benefit to their practice. If you have any comments or suggestions, or would like to submit an article or personal spotlight for a future edition of *The Defense Line*, feel free to contact the editors, Alexander Wright, Jr. 410.823.8250 or Matthew T. Wagman 410.385.3859.

YOUNG LAWYERS

Assumption of the Risk: Winning a Summary Judgment Motion

BY MICHAEL J. SEPANIK

For many attorneys defending against construction accident and product liability lawsuits, the potential defense of assumption of the risk defense is generally addressed at two points during a lawsuit. In an initial case evaluation, a client is generally apprised of the potential defense of plaintiff's assumption of the risk, or alternatively, plaintiff's contributory negligence. Aside from addressing the behavior of the plaintiff that may support these defenses as well as the elements of each defense, an in-depth analysis generally cannot be performed, as discovery has not been conducted.

During plaintiff's deposition, a portion of the questions should focus on establishing the plaintiff's knowledge of certain risks, his appreciation of a certain danger and his decision to confront such danger. The defenses of assumption of the risk and contributory negligence are often addressed in overlapping fashion—as often times they may overlap factually—however assumption of the risk in my view presents a much greater chance for summary judgment based on the state of the law in Maryland. It is important to recognize the distinctions between assumption of the risk and contributory negligence in order to place a lawsuit in a better posture for summary adjudication at the close of discovery.

A Comparison of Assumption of the Risk and Contributory Negligence.

In Maryland, it is well settled that in order to establish the defense of assumption of risk, the following must be demonstrated: the plaintiff had knowledge of the risk of danger; the plaintiff appreciated that risk; and the plaintiff voluntarily confronted the risk of danger. *Liscombe v. Potomac Edison Co.*, 303 Md. 619, 630, 495 A.2d 838 (1985). "The doctrine of assumption of risk rests upon an intentional and voluntary exposure to a known danger, and, therefore, consent on the part of the plaintiff to relieve the defendant of an obligation of conduct toward her and to take her chances from harm from a particular risk." *Rogers v. Frush*, 257 Md. 233, 243, 262 A.2d 549 (1970). If established, assumption of risk functions as a complete bar to recovery because it is a "previous abandonment of the right to complain if an accident occurs." *ADM Partnership, et al. v. Martin*, 348 Md. 84, 92, 702 A.2d 730 (1997).

Contributory negligence as it is well known is the failure of a person to observe ordinary care for his or her own safety. *Mensh v. Pollinger Co.*, 277 Md. 553, 559 (1976). Stated otherwise, contributory negligence is the doing of something that a person of ordinary prudence would not do, or the failure to do something that a person of ordinary prudence would do under the circumstances. *Id.* Contributory negligence, also a complete bar to recovery, defeats recovery because it is a proximate cause of the accident in question. *See Schroyer v. McNeal*, 323 Md. 275, 281, 592 A.2d 1119 (1991).

Thus, there are two distinctions between assumption of the risk and contributory negligence that make assumption of the risk a much stronger defense at the dispositive motions stage. First, an assumption of risk analysis only considers the conduct of the plaintiff. *Schroyer v. McNeal*, 323 Md. at 282. Second, assumption of the risk cannot be defeated by the consideration of any potential negligence on behalf of the defendants:

> *[W]hether they overlap or not, the critical distinction between contributory negligence and assumption of risk is that, in the latter, by virtue of the plaintiff's voluntary actions, any duty the defendant owed the plaintiff to act reasonably for the plaintiff's safety is superseded by the plaintiff's willingness to take a chance. Consequently, unlike the case of contributory negligence, to establish assumption of the risk, negligence is not an issue—proof of negligence is not required.*

Id. at 282.

When opposing a motion for summary judgment, plaintiff's counsel will attempt to focus the court's attention on a defendant's bad acts, in an effort not only to demonstrate culpability, but to mitigate the plaintiff's own inattention or carelessness. In certain cases, especially where experts are involved on the liability issues, it may make sense strategically to forgo any arguments relating to contributory negligence at the summary judgment stage. This allows the court to focus solely on the testimony relating to plaintiff's assumption of risk, and makes it more difficult for plaintiff's counsel to present an opposition with a confusing recitation of facts that are allegedly in dispute that only goes to the negligence arguments.

The Focus on Plaintiff's Actions Makes Plaintiff's Deposition Testimony Critical to a Motion Based on Assumption of the Risk.

[1] *By definition, assumption of risk focuses on a particular individual's understanding of a risk of danger, and his decision to voluntarily encounter that risk. However, the Court of Appeals has held that in determining whether a plaintiff had knowledge and appreciation of an open and obvious risk, an objective standard must be applied and plaintiff "will not be heard to say that he did not comprehend a risk which must have been obvious to him."* ADM Partnership, et al. v. Martin, *348 Md. at 92 (internal citations and quotations omitted). Therefore, in certain instances, courts will apply an "open and obvious," or objective standard to risks that are encountered. While a court may rule that a plaintiff assumed the risk based on an objective standard, a defendant should not rely on the application of an objective standard only, but should attempt to show that the particular plaintiff in question knew of the danger in question, appreciated the risk, and made a willing decision to encounter the risk of danger.*

[2] *In instances where assumption of the risk is the critical defense, counsel may want to take the plaintiff's deposition prior to issuing interrogatories, or in the alternative, issue interrogatories that do not address the factual circumstances of the incident in question. This will potentially make it more difficult for plaintiff to create a question of material fact with his answers to interrogatories at the motions stage. In addition, once the plaintiff has testified, his counsel will have little choice but to issue written discovery responses that conform to plaintiff's deposition testimony.*

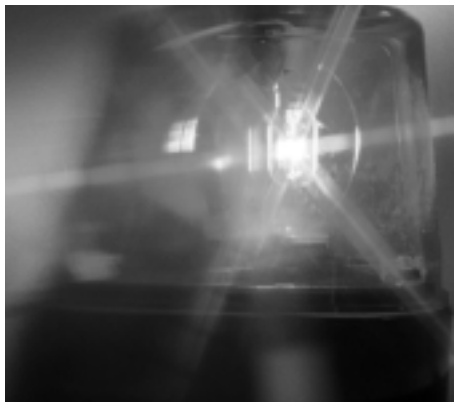
(ASSUMPTION OF THE RISK) *Continued from page 4*

At deposition, a well-prepared plaintiff will likely avoid giving specific answers to questions that focus on assumption of the risk[1], and therefore the initial testimony offered by plaintiff may amount to vague, nonspecific answers that tend to leave an opening for counsel to argue that there exists a material dispute of fact. Although interrogatories[2] and requests for admissions can be used to elicit facts to be used in establishing an assumption of the risk argument, plaintiff's deposition testimony will serve as the foundation of the material facts to be used in a motion for summary judgment.

The plaintiff's deposition is critical and he will be well-prepared for the initial questions relating to assumption of the risk. However, as there are oftentimes more than one defendant to a lawsuit, co-defense counsel play an important role with the questions they select. Co-defense counsel should map out a strategy to make the best of this opportunity. Perhaps foremost, co-defense counsel have an opportunity to craft very precise questions based on plaintiff's prior testimony. This presents an opportunity to winnow vague, non-specific testimony into a series of definitive, yes or no answers, that will leave little room for interpretation at the summary motions stage. If specific testimony by the plaintiff is elicited at deposition, then when opposing a motion for summary judgment, plaintiff's counsel is left in the unenviable position of having to explain testimony inconsistent with his present position.

Aside from the fact that co-defense counsel has the advantage of hearing plaintiff's initial answers, he or she has two other advantages. First, he or she has the opportunity to pose questions that incorporate plaintiff's prior testimony. Regardless of preparation, a plaintiff will strive to maintain consistency with his prior testimony, therefore a rather general prior answer can be placed in the body of a specific question in order to elicit a very useful yes or no answer. In addition, after a full round of questions from one attorney, a plaintiff will be less focused and vigilant.

Thus, the questions posed by a co-defense counsel may yield testimony that is critical to an assumption of the risk defense. If time needs to be spent reviewing notes and drafting a series of questions, counsel should ensure that a break is taken to allow adequate preparation. Theoretically, even if there is no



co-defense counsel to ask follow-up questions, counsel will of course utilize a break to review notes at the end of the deposition to ask more directed follow-up questions.

Maryland Law is Favorable to the Determination of Assumption of the Risk as a Matter of Law at the Summary Judgment Stage.

As noted above, the linchpin of any assumption of risk analysis is the determination of plaintiff's knowledge and appreciation of the risk. The Court of Appeals has repeatedly held that, where the facts are not in dispute and the plaintiff intentionally and voluntarily exposed herself to a known danger, appellate courts are to sustain the granting of summary judgment or the direction of a verdict. *See ADM Partnership, et al. v. Martin*, 348 Md. at 103; *see also Schroyer v. McNeal*, 323 Md. 275 (affirming trial court's determination of assumption of risk on motion for summary judgment where plaintiff took an informed chance to walk across icy parking lot); *and see Gibson v. Beaver*, 245 Md. 245 Md. 418, 421, 226 A.2d 273 (1967). The United States District Court for the District of Maryland has likewise recently decided that a plaintiff assumed the risk of an injury as a matter of law. *See Gellerman v. Shawan Road Hotel Limited Partnership*, 5 F. Supp.2d 351, 352 (D. Md. 1998) ("Plaintiffs contend here that whether the condition of the sidewalk joint was 'open and obvious' constitutes a question of fact. While this is frequently the case, I am persuaded here that reasonable minds could not disagree on this issue, and thus I determine it as a matter of law.").

So long as the facts surrounding plaintiff's appreciation of a risk and the voluntary exposure to a danger are not in dispute, the assumption of risk analysis is removed from the jury, and a court should decide the issue as a matter of law. While contributory negligence can potentially be determined as a matter of law in certain instances, because it requires an evaluation of factors such as duty, ordinary care, and reasonableness of behavior on behalf of both the defendant and the plaintiff, a jury question is generally created. *See Schroyer v. McNeal*, 323 Md. 275. In addition, in many instances involving expert witnesses on workplace safety issues, the interpretation of OSHA regulations and ANSI standards make summary adjudication difficult, as the experts will reach different conclusions based on the same standards and leaving the issue one for the jury to decide.

A focused motion for summary judgment on the issue of assumption of the risk invites a court to consider a fairly straightforward analysis that can be based almost entirely on an evaluation of the testimony of the plaintiff. Keeping this strategy in mind throughout the course of a lawsuit can enable a defendant to present a motion for summary judgment that leaves little room for claims of disputed facts, and a respectable chance for summary adjudication.

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Telemedicine: Friend or Foe of the Medical Profession?

By Robert W. Goodson and Heather Austin Jones

The healthcare industry is just one of many industries that have been dramatically influenced by the Internet. As a result of the Internet, the healthcare industry in recent years has faced a paradigm shift in the way healthcare and medical services are provided. This shift is moving away from the theory that patient care should involve face-to-face interaction between physicians and patients located in the same room, and move towards the concept that the delivery and sharing of medical information over the Internet known as telemedicine can revolutionize, and hence improve, the way in which physicians treat their patients.

But change is not necessarily a good thing. Although telemedicine promotes consultation between physicians regarding a patient's care, the electronic transfer and sharing of a patient's information via the Internet presents potential legal liabilities and consequences of which physicians need to be aware.

Issues

One aspect of telemedicine, teleradiology is illustrative of these points. Teleradiology is an emerging trend in telemedicine involving the electronic transmission of CT scans, MRIs and/or ultrasound pictures to companies operating in the United States or overseas which take advantage of time zone differences and the latest technology by having radiologists available who can quickly read and interpret the transmitted images and advise treating physicians. Used more often in rural areas and by smaller hospitals, which often experience a shortage of radiologists or do not staff radiologists in-house, teleradiology is viewed as improving the quality of healthcare by guaranteeing that well-rested radiologists are available 24/7.

But while some doctors and hospitals tout the benefits of teleradiology, the practice raises a host of legal concerns. For example, are properly licensed radiologists performing the work? Physicians are required to be licensed in any state in which they practice medicine, and many states include electronic consultations in their definition of the practice of medicine. Cyberspace, however, knows no boundaries, and telemedicine does not recognize state or international boundary lines. Remote radiology operations which may be staffed with only one or two U.S. certified radiologists that approve reports, prepared by less-qualified or un-licensed technicians, a practice known as ghosting may be worrisome. Given the difficulties in authenticating who is doing the work, policing such services remains a concern.

{ Although telemedicine promotes consultation between physicians regarding a patient's care, the electronic transfer and sharing of a patient's information via the Internet presents potential legal liabilities and consequences of which physicians need to be aware.

Another concern is that of patient privacy and the related issue of informed consent. The trend toward the use of teleradiology has resulted in several regulatory initiatives, including state and federal legislation designed to protect patient privacy and to ensure that patients are notified whenever information about them is transmitted elsewhere, especially overseas to countries that lack strong privacy safeguards. For example, Rep. Edward J. Markey (D-Mass.) and Sen. Hillary Rodham Clinton (D-N.Y.) recently introduced legislation that would require patient consent in advance of transmission.

As physicians and patients become more connected through telemedicine, malpractice also becomes an issue. Although establishment of the physician-patient relationship may seem more problematic in the context of telemedicine, courts have long held that such a relationship can be created even in the absence of the physician actually meeting, or coming into physical contact with, the patient. Given the dearth of case law involving medical malpractice over the Internet, it is likely that analogies will be drawn from other types of medical malpractice cases.

Questions concerning where a malpractice case can be filed when the alleged negligence of the overseas radiologist is at issue, and whether state or foreign law would apply, present additional exposure for hospitals. The inability to easily interact with the overseas radiologist also creates a risk management problem for the emergency physician in the decision to discharge the patient before the in-house radiologist is available for a discussion of the diagnosis.

Comment

In sum, the trend toward greater use of telemedicine is widening the spectrum of care that doctors can provide from afar and enabling more outsourcing of medical services overseas. But given the host of legal issues accompanying the use of telemedicine in treating patients, and the fact that telemedicine has developed without the benefit of any formal law aimed directly at the practice of medicine on the Internet, the users of such technology are left wondering whether to embrace telemedicine as a friend or ward it off as a foe to the medical profession. Until the many legal unknowns can be definitely answered, physicians may be reluctant to provide consultations over the Internet, thus keeping the healthcare industry as a whole from fully realizing the benefits of this truly revolutionary way of treating patients.

For over 25 years as a trial lawyer, Bert Goodson has been the lead trial counsel in more than 120 jury trials. He has defended medical and professional malpractice lawsuits on behalf of physicians, hospitals, managed-care organizations and other healthcare professionals. The medical care at issue has concerned numerous specialties as well as the operation and institution of various medical devices. In addition, Bert has extensive experience in other areas of complex litigation, including products liability.

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(INSURER-INSURED COMMUNICATIONS) *Continued from front cover*

broad view, courts assume that the dominant purpose of insurer-insured communications is for defense of a claim against the insured and that the communication would be forwarded to an attorney when and if one were retained. In contrast, "narrow view" jurisdictions require positive proof that the dominant purpose of the communication be for defense of a claim against the insured and that the insured have a reasonable expectation of privacy.

III. Maryland Adopts a More "Narrow" Two-Part Test

The *Cutchin* Court found that the characterization of jurisdictions in terms of "broad" versus "narrow" views needed further analysis, noting that the cases decided by other jurisdictions turn on their facts and that few cases, if any, apply a *per se* rule that all or none of insurer-insured communications are privileged. The Court in *Cutchin* therefore likewise declined to adopt a *per se* rule either way.

Instead, the *Cutchin* Court adopted a fact-specific two-part test most resembling the "narrow" view and requiring the party asserting the attorney-client privilege to demonstrate that the dominant purpose of the communication was the defense of the claim, and that the insured had a reasonable expectation of privacy with regard to the communication.

{ …the Cutchin Court adopted a fact-specific two-part test most resembling the "narrow" view and requiring the party asserting the attorney-client privilege to demonstrate that the dominant purpose of the communication was the defense of the claim, and that the insured had a reasonable expectation of privacy with regard to the communication. }

In applying this standard in *Cutchin*, the Court found that the communication between Mr. Cutchin and Mr. St. Hill was not privileged because, when Mr. Cutchin gave the statement at issue, no civil claim had been filed against him and State Farm had not retained an attorney for defense of any claim. In taking the statement, therefore, Mr. St. Hill was not acting as an agent of the insured, but merely as an adjuster. Moreover, Mr. Cutchin had a privately retained attorney at the time who was present at the communication. The communication was not made at the request of, or for the use of, Mr. Cutchin's privately retained attorney. The Court concluded that Mr. Cutchin had not proven that the communication was for the dominant purpose of defending a claim, nor did he have a reasonable expectation of privacy, emphasizing the word "reasonable." The Court's emphasis on the lack of a reasonable expectation of privacy in this instance suggests that providing a strong fact-based argument regarding your client's reasonable expectations of privacy will go a long way towards protecting privileged communications.

IV. Conclusion

Prior to *Cutchin*, no Maryland appellate court had considered the privilege status of insurer-insured communications. *Cutchin* squarely confronted this issue and yielded a two-part test; insurer-insured communications are privileged if (1) "the dominant purpose of the communication was for the insured's defense" and (2) "the insured had a reasonable expectation of confidentiality." *Cutchin* gives practitioners a clear analytical approach to determining whether and to what extent insurer-insured communications will be found to be protected of the attorney-client privilege. Guided by the principles of *Cutchin*, practitioners can timely raise appropriate claims of privilege and avoid inadvertent subject matter waivers.

SUBPOENAING MEDICAL RECORDS

The Rules Are About to Change *(2005 Md. Laws Ch. 503)*

Effective July 1, 2005, there will be changes to the Health Care Statute, specifically sections 4-3006(b) and 4-307. The good news is that the changes create one process for all medical records subpoenas and eliminate the current special procedures for mental health records. Come July 1, 2005, when subpoenaing medical records you must do the following:

1) send a Notice (the form is in the new statute), a copy of the subpoena and a copy of the HG 4-3006 to the "person in interest" (usually the patient) or his/her counsel via certified mail,
2) wait 30 days for a response,
3) if there is no objection, send the subpoena, a copy of the new HG 4-306, and written "assurance letter" to the record holder stating one of the following:

- **a.** 30 days have passed with no objections being raised; or
- **b.** any objections have been resolved and the requested disclosure is in compliance with that resolution.

Per the Statutory Notice, "objections" are to be raised by filing a motion for protective order or motion to quash the subpoena.

Since other minor logistics may be involved, you are encouraged to carefully review the new changes. The text of the enrolled bill—SSB 690—is available at the General Assembly website—**http://mlis.state.md.us**.

SPOTLIGHTS

Workers Compensation Immunity Extended to Supervisory Employee of Special Employer

BY J. MARK COULSON

Recently, J. Mark Coulson of Miles & Stockbridge successfully argued that workers compensation immunity should be extended to the supervisory employee of an independent contractor hired by a hospital to run its testing laboratory. The suit, filed in the United States District Court for the District of Maryland, was brought by a hospital employee injured in the testing lab. The hospital employee charged that, due to negligent and intentional actions by the laboratory supervisor, testing equipment malfunctioned in the lab, spraying her with infected blood products and causing her to contract HIV and Hepatitis C. The injured worker also sued her hospital-employer and the manufacturer of the equipment.

Mark, who represented both the hospital and the lab supervisor, first argued by way of a motion to dismiss that the claims against the hospital were barred under the election of remedies doctrine because the worker had already brought a workers compensation claim against the hospital and was receiving benefits. In addition, Mark argued that, in any event, Plaintiff did not make out a cognizable tort claim against the hospital on the face of her complaint. The Court agreed.

In a follow-up motion for summary judgment, Mark argued that workers compensation immunity should be extended to the lab supervisor even though he was not an employee of the hospital, but of the management company with whom the hospital had contracted to run the lab. Mark urged that immunity should be extended under one of two theories. First, he argued that the lab supervisory should be considered the borrowed servant of the hospital, entitling him to supervisory employee immunity pursuant to *Athas v. Hill*, 300 Md. 133, 476 A.2d 710 (1984). Alternatively, Mark argued that the injured hospital worker should be considered the borrowed servant of the lab management company, entitling the lab

management company and its supervisory employee to the same immunity.

The Court agreed with the second argument, finding that the injured worker, whose duties were confined to the lab under the direction of the management company and its supervisor, was the borrowed servant of that company and that the lab management company was, therefore, the special employer of the hospital worker at the time of the injury. After her injury, the Court noted, the injured worker could have brought a workers compensation claim (or arguably an intentional tort claim if one could be properly stated) against her actual employer (the hospital) or her special employer (the management company), but not both. Having elected to bring a claim against the hospital, the injured worker could not now sue her special employer, the management company, or its supervisory employee, the lab supervisor.

The case continues against the product manufacturer. An appeal is expected if Plaintiff does not recover against the manufacturer.

"The Court agreed with the second argument, finding that the injured worker, whose duties were confined to the lab under the direction of the management company and its supervisor, was the borrowed servant of that company and that the lab management company was, therefore, the special employer of the hospital worker at the time of the injury."

It should also be noted that, with much assistance from Magistrate Judge Grimm and Judge Davis, the parties engaged in staged discovery, such that there was limited discovery on the workers compensation issues prior to moving on to other issues, allowing Mark the opportunity to submit his motion without either side having to engage in exhaustive discovery on other issues. Additionally, Mark and Plaintiff's counsel came up with an agreed to set of stipulated facts for purposes of the Motion for Summary Judgment based on a limited exchange of documents, dispensing with the need for depositions prior to the motion being decided.

J. Mark Coulson is a partner in Miles & Stockbridge's Product Liability Group and also heads up its Professional Liability section, focusing on the trial of catastrophic injury cases. He is currently MDC's Legislative Co-chair.

NEW MEMBERS

Michael J. Carlson
Laurie Ann Garey
Melodie M. Mabanta
James A. Rothschild
Daniel S. Shaivitz
Susan E. Smith
Mary Elizabeth Kaslick

SPOTLIGHTS—CONTINUED

In the matter of *McCormick v. Strider*, Circuit Court of Maryland for Calvert County (April 2005), Craig B. Merkle and Shannon Madden Marshall of Goodell, DeVries, Leech & Dann, LLP obtained a defense verdict in a medical malpractice case after three days of trial. The Plaintiff had alleged malpractice in her postoperative management following a hysterectomy. Specifically, the Plaintiff alleged that she developed a massive hematoma and infection that went undiagnosed for two weeks and ultimately led to multiple surgeries and hospitalizations. The defense maintained that the patient's clinical presentation was inconsistent with an immediate post-operative hematoma and that the physician Defendant carefully monitored the patient and intervened when it was medically indicated. The jury agreed and found that there was no breach in the standard of care by the Defendant.

In *Rhaney v. University of Maryland Eastern Shore*, CA No. 118, September Term 2004. Reported. Opinion by Harrell, J.; Filed August 15, 2005.

The issue was whether the CSA imposed an incorrect standard of foreseeability of harm which restricts causes of actions against business hosts and landlords for their failure to protect invitees or tenants from criminal activity? The Judgment was affirmed on different grounds. The assault and battery was not sufficiently foreseeable; a dormitory tenant is not necessarily a business invitee. The university therefore did not breach its duty. Counsel: Ernest I. Cornbrooks, III for petition; Asst. Attorney General Jessica V. Carter for respondent.

In *Cathy Mason v. Chauncey R. Lynch*, the Court of Appeals was faced with the question that in a personal injury case arising from a motor vehicle accident, may a defendant place in evidence photographs showing minimal property damage and argue [in closing argument to the jury] that the photographs support an inference that the plaintiff was not injured, absent expert testimony establishing a correlation between property damage and personal injury?

The Court of Appeals held that, under the circumstances of the case, the admissibility of the photographs was within the trial judge's discretion and that the trial judge did not abuse his discretion. The Court of Appeals further held in light of the admission of the photographs and other evidence, that the closing argument by defendant's counsel was not improper. September Term No. 24 Filed July 15, 2005.

Peggy Fonshell Ward, of Moore & Jackson, had a nice winning streak this summer. First was *Michel v. Ferguson*, in the Circuit Court for Baltimore County. The plaintiff ex-wife contested her ex-husband's change of beneficiary on his life insurance policies from her to his fiancée, the defendant, claiming lack of mental capacity, undue influence, and forgery. At the conclusion of five days of the plaintiff's case, Judge Susan Souder granted the defendant's Motion for Judgment.

Next was a trial in Circuit Court for Harford County, *Young v. Creamer*, in which Peggy successfully defended a trucking company and driver. The truck had stopped under the Route 43 overpass on I-95, after having a tire blowout on the ramp. A following motorcycle, driven by the plaintiff, came around the ramp and, while looking over his shoulder to merge, instead of ahead to the traffic, smacked into the back of the truck, with substantial injuries.

Finally, in the Superior Court for the District of Columbia, in *Howard v. Delta Air Lines, Inc.*, Peggy successfully defended a passenger and his employer, sued after the passenger accidentally dropped his bag containing a laptop computer onto another passenger, while attempting to place it in the overhead bin. Delta was represented by Tom Gravely and George Huber of Lord & Whip and also got a defense verdict for Delta.

One man's airplane hangar in the backyard isn't a problem for the Property Owners Association of Chesapeake Ranch Estates. After all, backyard hangars are fairly common in the Lusby development, which has its own runway.

But a nearly 50-foot high hangar, complete with elevated "breezeway?" Now that's a problem.

A Calvert County Circuit Court judge decided this summer that Robert A. Drefs must scale back plans for his half-built hangar to comply with the association's demands.

Property Owners Association of Chesapeake Ranch Estates sued Robert A. Drefs and his wife, Karen S. Bennett, last year after residents noticed that the building was much higher than shown in the plans the association had approved.

According to the association's complaint, Drefs submitted plans for a garage, two-story hangar and ground-level "breezeway" in 2001. After reviewing the plans, which showed a peak roof height of 29 feet, the association's Architectural Review Committee gave Drefs permission to build the structure. Drefs, who is retired, builds planes from kits and teaches others to do the same. He wants a hangar to accommodate a yet-to-be-built Lancair plane. But when he started construction in 2003, what began to take shape was very different from what the association had approved.

According to the complaint, the peak height would be between 43 and 48 feet. The breezeway became an elevated "multi-story bridge structure" 24 feet off the ground, which looked like it was intended to connect the second story of the hangar to the roof of his house. Plus, there was a bay window on the second story of the hangar.

A countersuit was filed for making Mr. Drefs and Ms. Bennett stop working on the hangar.

Judge William Krug granted the association's motion for summary judgment and ordered Drefs to come into compliance with Chesapeake Ranch Estates' codes.

SPOTLIGHTS—CONTINUED

In *Lightolier, a Division of Genlyte Thomas Group, LLC v. David Hoon, et al.*, 387 Md. 539 (2005) the Court of Appeals considered a case arising from the occurrence of a fire that caused substantial damages to the home of David and Texie Hoon (the "Hoons"). At issue was whether the manufacturer of a recessed light fixture that gave rise to the fire when it was later improperly surrounded by thermal insulation can be strictly liable under a product liability theory when warnings existing on both the light fixture itself and the instruction manual accompanying it clearly warned of a risk of fire if the light fixture was placed in close proximity to thermal insulation.

On November 15, 199, the Hoons and their insurer, Federal Insurance Company, respondents, filed a complaint in the Circuit Court for Kent County against numerous defendants including Lightolier, a Division of Genlyte Thomas Group, LLC ("Lightolier"), petitioner, with the specific claims against Lightolier being for negligence, breach of warranty and product liability—defective design. Lightolier, a designer and manufacturer of lighting products, including the light fixture alleged to have been involved in starting the fire that damaged the Hoons' home, thereafter filed a motion for summary judgment with the Circuit Court on March 15, 2002. On April 15, 2002, the Circuit Court granted Lightolier's motion for summary judgment.

The Hoons thereafter filed an appeal to the Court of Special Appeals. On September 15, 2004, the intermediate appellate court issued its opinion, *Hoon v. Lightolier*, 158 Md.App. 648, 857 A.2d 1184 (2004), which reversed the Circuit Court's granting of Lightolier's motion for summary judgment. On November 1, 2004, Lightolier filed a Petition for Writ of Certiorari to this Court. On December 17, 2004 the petition was granted. *Lightolier v. Hoon*, 384 Md. 448, 863 A.2d 997 (2004). Lightolier presented one question for the Court's review:

"Where a manufacturer supplements its undisputedly sufficient warnings accompanying its product with an additional safety feature, does the manufacturer forfeit its right to assume that those warnings will be read and heeded such that misuse of the product in direct contravention of those warnings is no longer deemed the proximate cause of damages under the law, even though the product is safe for use when the warnings are followed?"

The Court of Appeals held that, because adequate warnings were placed on the Lightolier light fixture at issue that warned of the risk of fire if thermal insulation was thereafter placed within three inches of the light fixture, and it is undisputed that the fire would not have occurred if these warnings had been heeded, the proximate cause of the fire was the negligent placement of thermal insulation within three inches of the already installed light fixture, thereby resulting in a misuse of the fixture. Therefore, the Circuit Court properly entered summary judgment in favor of Lightolier upon its motion.

In *Johnson v. Nationwide Insurance Company*, No. 125 September Term, July 15, 2005 the parties agreed for purposes of the litigation that Mr. Gaither was negligent and that his actions caused the death of Mr. Jermal Thomas. Jaedon Johnson is a minor child whose father, Jermal Thomas, was killed in an automobile accident on March 6, 2002. Mr. Thomas, riding in a car driven by Damon Gaither, was killed by the negligent actions of Mr. Gaither. Mr. Gaither had no automobile insurance. Mr. Thomas was insured by Hartford Underwriters Insurance Company ("Harford") and his policy provided uninsured motorist coverage of $20,000. Jaedon's mother, Tammika Johnson, was insured by Nationwide Mutual Insurance Company ("Nationwide") and her policy provided uninsured motorist coverage in the amount of $25,000.

On October 2, 2002, Jaedon filed a Complaint against Mr. Gaither (Wrongful Death), Hartford (Breach of Contract), and Nationwide (Breach of Contract). The counts against Mr. Gaither and Hartford were resolved with the dismissal of the complaint against Mr. Gaither and the payment of $20,000 from Hartford. Jaedon continued to pursue his claim for uninsured motorist coverage under his mother's policy, and on June 19, 2003, he filed a motion for partial summary judgment against Nationwide. On July 2, 2003, Nationwide filed a cross-motion for summary judgment. On July 28, the Circuit Court for Baltimore City held a hearing on the matter, granted Jaedon's motion, and issued an order which states, in pertinent part:

> [T]he plaintiff's motion is hereby GRANTED and the defendant Nationwide Mutual Insurance Company's contract is determined to provide uninsured motorist coverage in the amount of $5,000.00 to Jaedon Johnson, in addition to the $20,000 in benefits available under the insurance policy of the decedent, Jermal Thomas. This issue is controlled by the Court of Appeals' alternative holding in *Forbes v. Harleyville Mutual*, 322 Md. 689, 708-713 (1991), notwithstanding the language of Md. Code Ann. §19-509(c)(2).

Nationwide appealed the Circuit Court decision and on October 6, 2004, the Court of Special Appeals, in a reported opinion, reversed the Circuit Court. *Nationwide Mut. Ins. Co. v. Johnson*, 159 Md. App. 345, 859 A.2d 279 (2004). The Court of Special Appeals held that Jaedon's claim for the wrongful death of his father (Mr. Thomas) was not covered under his mother's Nationwide policy because Mr. Thomas was not an insured under that policy. Jaedon filed a petition for writ of certiorari, which we granted. *Johnson v. Nationwide*, 384 Md. 581, 865 A.2d 589 (2005).

The question before the Court of Appeals was whether §19-509 of the Insurance Article required an insurer to provide uninsured motorist coverage for the wrongful death of a person who was not an insured under the policy. The court held that §19-509 does not require an insurer to provide such coverage. Section 19-509(c)(1) clearly requires the insurer to pay the insured for his or her own bodily injuries, suffered as a result of a collision with an uninsured motorist. Section 19-509(c)(2) makes it clear that if a person who is injured under the policy dies as a result of a motor vehicle collision with an uninsured motorist, the surviving relatives of that insured can recover for the wrongful death of the insured under the insured's policy.

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Fred Thompson, former US Senator, prosecutor and accomplished film and television actor, stars as his character, District Attorney Arthur Branch, in *Law & Order* and *Law & Order: Trial by Jury*, the new drama series. His film features include *Marie* portraying himself and since then *In the Line of Fire, Die Hard II* and *Hunt For Red October.*

Senator Thompson served as Minority Counsel to the Senate Watergate Committee. His experience with the Watergate scandal is detailed in his memoir, *At That Point in Time.* President George W. Bush recently appointed Thompson as an informal advisor to guide the US Supreme Court nominee, John G. Roberts, Jr., through the Senate.

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Susan Estrich was the first female President of the *Harvard Law Review.* She is now a Fox News commentator and a law professor at the University of Southern California. She has clerked for US Supreme Court Justice John Paul Stevens, US Court of Appeals Judge J. Skelly Wright and has paved the way for countless women to attain positions of leadership. She is a witty and intelligent author and syndicated columnist and brings passion and a sense of humor and honesty to her audiences.

Susan Estrich

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MEETING HIGHLIGHTS

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SLDO programming membership expert Mark Levin

Mark Levin will provide leaders with dozens of ideas on how to turn prospects into members, and how to increase the participation of these members in SLDO activities and meetings.

Spouse and Guest Hospitality

A hospitality room is available for guests and spouses to meet for breakfast each morning and talk among themselves. A concierge will be on hand to provide visitor information on Chicago, its attractions and museums.

NETWORKING EVENTS

DRI Community Service Project—Greater Chicago Food Depository

Hosted by the Young Lawyers Committee

Please note your participation in the appropriate area on the registration form.

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Diversity Reception at The Foundation Room

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Women's Networking Luncheon

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Sports Extravaganza Reception

Hosted by the Young Lawyers Committee

Installation Ceremony and President's Gala

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GENERAL INFORMATION

CLE

Earn 15.5 hours of CLE including 1 hour of ethics and 1.5 hours of law practice management credit plus the opportunity to earn additional CLE at Substantive Law and Practice Area Committee Meetings.

Registration Information

Save $100 when you register before September 21, 2005!

Registration fee includes:

- admission to all non-ticketed events
- comprehensive CD-ROM sent in advance if registered by September 21
- continental breakfast each morning
- refreshment breaks
- admission to all CLE programs
- opportunity to purchase tickets to the Award's Luncheon and President's Gala

To have your name listed on the advance registration list distributed at the Annual Meeting, DRI must receive your registration on or before September 21, 2005.

Registrations received after September 21 are processed on-site.

SCHEDULE OF EVENTS

Tuesday, October 18

1:00 PM – 5:30 PM	**Meeting:** Law Institute

Wednesday, October 19

7:00 AM – 7:00 PM	NAMWOLF Annual Meeting
8:00 AM – 1:00 PM	**Meeting:** Board of Directors
1:00 PM – 5:30 PM	**Meeting:** Law Institute with Committee Chairs, Vice Chairs and Program Chairs
3:00 PM – 4:00 PM	**Meeting:** Annual Meeting Steering Committee
4:00 PM – 8:00 PM	Registration
4:00 PM – 8:00 PM	Exhibit Showcase
5:30 PM – 6:30 PM	**First-Time Attendees/DRI New Member Reception**
6:30 PM – 8:00 PM	**Chicago World's Fair Welcome Reception**

Thursday, October 20

7:00 AM – 6:00 PM	Registration
7:00 AM – 8:30 AM	Continental Breakfast in Exhibit Showcase
7:30 AM – 9:00 AM	**Meeting:** State Representatives
7:30 AM – 9:00 AM	**SLDO:** Executive Directors Networking Breakfast
9:00 AM – 9:15 AM	Opening Ceremony
9:15 AM – 10:15 AM	**Blockbuster:** Senator Fred Thompson
10:15 AM – 10:30 AM	Refreshment Break in Exhibit Showcase
10:30 AM – 12:00 PM	**Education:** Preserving the Jury Trial
12:00 PM – 1:45 PM	**Awards Luncheon: Susan Estrich** *(Ticketed event)*
2:00 PM – 3:15 PM	**Education:** The Attorney General in the Boardroom: Guns and Tobacco to Earnings Reports
2:00 PM – 3:15 PM	**Education:** View from the Juror: Times, Are They A' Changing?
2:00 PM – 3:30 PM	**Meeting:** Nominating Committee *(Executive session)*
2:30 PM – 4:00 PM	**Meeting:** Young Lawyers Committee
3:15 PM – 3:30 PM	Refreshment Break in Exhibit Showcase
3:30 PM – 4:30 PM	**Education:** Whose Client is it Anyway? Ethical and Professional Liability Issues Associated with Disputes over Clients
3:30 PM – 4:30 PM	**Education:** We Want YOU. How to Become Active in DRI
3:30 PM – 5:00 PM	**Meeting:** Nominating Committee *(Open appointments)*
4:30 PM – 6:00 PM	**Meeting:** DRI Past Board Members
4:30 PM – 6:00 PM	**Education:** Substantive Law and Practice Area Committees
6:30 PM – 7:30 PM	**Diversity Reception at the Foundation Room, House of Blues Chicago®**
7:30 PM – 10:30 PM	**House of Blues Chicago**

Friday, October 21

7:00 AM – 6:00 PM	Registration
7:00 AM – 8:30 AM	Continental Breakfast in Exhibit Showcase
7:30 AM – 9:00 AM	**Meeting:** Membership Chairs
7:30 AM – 9:00 AM	**Meeting:** Publications and Newsletter Editor Chairs
7:30 AM – 9:00 AM	**Meeting:** Web Page Chairs
7:30 AM – 9:00 AM	**SLDO:** Leadership Breakfast *(Invitation only)*
8:30 AM – 12:00 PM	**Meeting:** Nominating Committee *(Open appointments)*
9:00 AM – 10:15 AM	**SLDO:** Sharing the Secrets of Success for Mutual Benefit
9:00 AM – 12:00 PM	**Education:** Make Another Human Being Give You What You Want
9:00 AM – 12:00 PM	**Education:** ADR Workshop
10:00 AM – 10:30 AM	Refreshment Break in Exhibit Showcase
10:15 AM	**Exhibit Raffle**
10:30 AM – 12:00 PM	**SLDO:** Breakouts by Size and Region
12:00 PM – 1:30 PM	**Women's Networking Luncheon**
1:00 PM – 4:30 PM	**Meeting:** Nominating Committee *(Open appointments)*
1:30 PM – 3:00 PM	**Education:** You're Not Just a Law Firm: Proactive Ways to Avoid Adding "I Got Sued" to Your List of Accomplishments
1:30 PM – 3:30 PM	**Education:** Advice from Those Who Know: How to Get Clients and Keep Them Happy
3:00 PM – 3:30 PM	Refreshment Break
3:15 PM – 4:30 PM	**Education:** I'm Flip But You Don't Have to Be
4:30 PM – 6:00 PM	**Education:** Substantive Law and Practice Area Committees
6:00 PM – 7:30 PM	**Sports Extravaganza Reception** – *Hosted by the Young Lawyers Committee*
8:00 PM	Chicago's Best Restaurants

Saturday, October 22

7:00 AM – 12:00 PM	Registration
7:00 AM – 8:30 AM	Continental Breakfast
7:30 AM – 9:00 AM	**Meeting:** Substantive Law and Practice Area Committees
8:30 AM – 9:45 AM	**SLDO:** Retention War: The New Rules of Engagement
8:30 AM – 12:00 PM	**Meeting:** Nominating Committee *(Open appointments)*
9:00 AM – 12:00 PM	**Education:** McElhaney on Evidence
10:00 AM – 11:00 AM	**SLDO:** Concurrent Breakout Sessions
10:00 AM – 10:30 AM	Refreshment Break
11:00 AM – 12:00 PM	**SLDO:** Regional Meetings
12:00 PM – 5:00 PM	**Meeting:** Board of Directors
6:30 PM – 11:00 PM	**Installation Ceremony and President's Gala**

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Are you a first-time DRI Annual Meeting attendee? Yes No

ANNUAL MEETING FEES

Registration Fees

	On or before Sept. 21	*After Sept. 21*
Member	$695	$795
Non-Member	$795	$895

Total Registration Fees .....

Ticketed Social Events

		No. of Tickets	*Total Amount*
Awards Luncheon (Thur.)	$55/ticket	x	
President's Gala (Sat.)	$75/ticket	x	
Community Service Project (Wed.)	free	x	
ADR Workshop (Fri.)	free	x	
Women's Networking Luncheon (Fri.)	free	x	
Total Ticketed Events			

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