Thought flows in terms of stories - stories about events, stories about people, and stories about intentions and achievements. The best teachers are the best storytellers. We learn in the form of stories.

Frank Smith

The Benchmark is a quarterly newsletter which will provide succinct discussions about important topics or developments in defense and commercial litigation. If there is a specific article or topic that piques your interest, please feel free to contact Andrew McCumber, at amccumber@mccumberdaniels.com or any other member of the team through our website, www.mccumberdaniels.com. The Benchmark is provided to foster collaborative discussion and your feedback or suggestions for topics is welcomed.

IN THIS ISSUE

If Speech is Silver, then Silence is Golden?  P. 2
Don’t Go Overboard: Limited Use of the Captain of the Ship Doctrine  P. 3
Legal Lending  P. 6
Court Allows Sanctions Award to Include Costs of Obtaining Award  P. 7
Electronic Communications Sent from the Workplace May Not be Confidential P. 9
In September of 2010, the Pennsylvania Superior Court in Barrick v. Holy Spirit Hospital, 2010 WL 3584461 (Pa. Super.), affirmed the Cumberland County Common Pleas Court decision that correspondence between plaintiff’s counsel and plaintiff’s treating physician, who was also plaintiff’s expert, was not protected by the attorney work product doctrine. The lower court case involved alleged injuries suffered by a patron of a hospital cafeteria when a chair collapsed beneath him. The treating physician of the patron was designated as an expert witness for the purposes of trial. As such, counsel for the hospital served a subpoena to the physician that included a request for medical records, as well as any correspondence between the physician and the attorney for the plaintiff.

The Pennsylvania Superior Court, in a matter of first impression, held that the correspondence was discoverable to the hospital because it was highly relevant to the action, and the hospital was entitled to discover information as to whether the physician’s opinions were his own, or merely based on what he was told by counsel for the plaintiff. Although the outcome was beneficial to the hospital, the Superior Court’s analysis tells a cautionary tale regarding communicating in writing with experts.

The Pennsylvania Superior Court discussed the relationship between the attorney work product doctrine and Pa.R.C.P. 4003.5, pertaining to expert witness discovery: “In reconciling this conflict, we are compelled to find that if an expert witness is being called to advance a party’s case-in-chief, the expert’s opinion and testimony may be impacted by correspondence and communications with the party’s counsel; therefore, the attorney’s work-product doctrine must yield to discovery of those communications.” Barrick v. Holy Spirit Hospital, 2010 WL 3584461 (Pa. Super.) at 4.

Not surprisingly, the decision caused concern with regard to communication with experts. Discovery in the form of Interrogatories and Requests for Production of Documents seeking any and all communication between attorneys and their experts began to be exchanged between counsel for plaintiffs and counsel for defendants. Conversations with experts via electronic mail, voice mail messages of substance regarding expert reviews, and draft reports were just a few examples of what may no longer be considered protected by the attorney work product doctrine as confidential communication with experts.

Although the decision enabled defense counsel to seek the above information from plaintiffs, it also allowed the opposite, which left many wondering where to draw the line for expert communication. A collective sigh of relief was heard in November of 2010, when the Pennsylvania Superior Court granted a petition for en banc re-argument, and the September 2010 Opinion was withdrawn. No longer considered “good” law at the moment, the legal community awaits the result of re-argument and what may evolve from further litigation on the issue of protection afforded communication with experts by the attorney work product doctrine.

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The definition of a nautical captain is: The captain (alt. master or shipmaster) of a merchant vessel is a licensed mariner in ultimate command of the vessel. The captain is responsible for its safe and efficient operation, including cargo operations, navigation, crew management and ensuring that the vessel complies with local and international laws, as well as company and flag state policies. The captain has authority for all persons on board, including: officers and crew, other shipboard staff members, passengers, guests and pilots.

In Pennsylvania medical malpractice law, the ‘Captain of the Ship’ doctrine is applied to a very small minority of cases where the defendant-surgeon is found to be in control of his operating room personnel. Although some jurisdictions no longer use it, Pennsylvania uses the doctrine, but in the limited way the doctrine was intended to be used.

The captain of the ship doctrine is an application of the “borrowed servant” principle to the operating room of the hospital and it imposes liability on the surgeon in charge of an operation for the negligence of his or her assistants during the period when these assistants are under the surgeon’s control, even though the assistants are also employees of the hospital and even though the assistants are of the same profession.

The question becomes, if there is an accident, or a negligent act performed on the ‘ship,’ in what circumstances does the ‘Captain of the Ship’ doctrine apply?

Examples of cases where the courts found that the doctrine may apply include cases in which a hospital’s resident physician left a foreign object inside the body of a patient, a hospital’s resident physician was negligent in the administration of anesthesia, a hospital employee was negligent in the administration of the wrong type of blood, a hospital’s resident physician and a junior intern were negligent in administering penicillin to a patient who was allergic to the drug, and a hospital nurse was negligent in placing hot water bottles to a patient’s feet during the course of an operation.

Cases where the doctrine has not been applied include circumstances where the surgeon is himself negligent, like where a surgeon is held liable for the improper positioning of a patient before surgery, for leaving the operating room before a patient is stabilized, for selecting an anesthesia care provider who is not properly qualified, for failing to notice that a patient was not getting enough oxygen, and for failing to take appropriate action in the face of an anesthesia emergency.

Pennsylvania first saw the application of the captain of the ship doctrine in McConnell v. Williams, 361 Pa. 355, 65 A.2d 243 (1949), where Mr. Justice Horace Stern famously wrote in his opinion: ‘in the course of an operation in the operating room of a hospital, and until the surgeon leaves that room at the conclusion of the operation, he is in the same complete charge of those who are present and assisting him as is the captain of a ship over all on board’ (footnote omitted). The Captain of the Ship simile came to receive more attention than the actual holding of the case. Franklin v. Gupta, 81 Md. App. 345, 567 A.2d 524 (1990).

McConnell reversed the entry of a nonsuit on behalf of an obstetrician as it held the doctor could be liable for the negligence of an assisting intern if the relationship between the obstetrician and the intern could be proven to be that of master-servant.

McConnell brought an action on behalf of his son against Williams to recover for injury to his eyes resulting from the alleged improper application of silver nitrate solution. Id. The case involved a cesarean section. Defendant, Dr. Williams, an obstetrician, selected an intern to assist him and care for the infant at the time of delivery. When the child was delivered, the obstetrician turned the child over to the intern for the purpose of tying the cord and applying a solution of silver nitrate into the infant’s eyes. Applying silver nitrate was a regularly established practice in obstetrical cases and was required by the rules and regulations of the Department of Health of the Commonwealth of Pennsylvania. One of the nurses present in the operating room noticed that the intern filled the
syringe and squirted the solution once into the child’s left eye and twice into its right eye, putting too much of the solution into the right eye. Moreover, the nurse testified that the intern failed to irrigate the eye. The result was that the child lost sight in her right eye.

Plaintiffs did not have any evidence that the obstetrician engaged in any act of negligence. The only question in the case was whether the surgeon should be responsible for the negligence of the intern. The obstetrician did not employ the intern; the intern was an employee of the defendant-hospital. The plaintiffs appealed a verdict of non-suit.

The Supreme Court of Pennsylvania stated that the trial court erred in entering the non-suit because it was for the jury to determine whether the relationship between the obstetrician and the intern was that of ‘master and servant’ at the time the newborn’s eyes were injured. If the relationship was found to be that of ‘master and servant’ then the obstetrician would be legally liable for the injury caused by the intern’s alleged negligence. The case was reversed and remanded to the trial court. In evaluating whether a ‘master and servant’ relationship exists, the court found that a person may be the servant of two masters, not joint employers, at one time as to one act, provided that the service to one does not involve abandonment of service to the other, such as where an employee is transferred to carry on work which is of mutual interest to both of two employers and to effect their common purpose. Id., citing Rest. Agency, §226; Siidekum, Administrator, v. Animal Rescue League of Pittsburgh, 353 Pa. 408, 414, 45 A.2d 59, 62; Kissell v. Motor Age Transit Lines, Inc., 357 Pa. 204, 209, 53 A.2d 593, 596.

The Supreme Court further stated that the intern, in performing a task assigned to him by the surgeon, of inserting the silver nitrate solution into the eyes of the newborn, may have also been serving the hospital by which the intern was employed. The intern would also be a temporary servant of the obstetrician who performed the caesarian, since a borrowed employee may, in the performance of an act, be serving interests of both his general employer and temporary master.

In determining whether a person is the servant of another, McConnell said that the essential test is whether he is subject to the latter’s control or right of control with regard to not only the work to be done but also to the manner of performing it. Id., citing Walters v. Kaufmann Department Stores, Inc., 334 Pa. 233, 235, 5 A.2d 559, 560; Joseph v. United Workers Association, 343 Pa. 636, 639, 23 A.2d 470, 472. The true criterion is the existence of power to control the employee at the time of the commission of the negligent act. Id.

This concept was next employed in Benedict v. Bondi, 384 Pa. 574, 122 A.2d 209 (1956), to remove a nonsuit entered on behalf of a surgeon where a nurse negligently burned the patient during the course of the operation. Thomas v. Hutchinson, 442 Pa. 118, 124-125, 275 A.2d 23, 26-27 (Pa. 1971). Later, the doctrine was used to affirm a jury verdict against a doctor who permitted a resident intern to operate in his stead when the patient was injured through the failure of others to inform either the intern or the doctor of the patient’s allergy to penicillin in Yorston v. Pennell, 397 Pa. 28, 153 A.2d 255 (1959). Id.

The utilization of the captain of the ship doctrine was continued in the companion cases of Rockwell v. Stone, 404 Pa. 561, 173 A.2d 48 (1961), and Rockwell v. Kaplan, 404 Pa. 574, 173 A.2d 54 (1961), where the Pennsylvania Supreme Court affirmed jury verdicts against both the surgeon and the chief anesthesiologist of the hospital for the negligence of the chief anesthesiologist and his assistants in not reporting or medically responding to an unusual occurrence during the injection of sodium pentothal which caused the later amputation of the patient’s left arm. Thomas v. Hutchinson, supra, 275 A.2d 23.

The captain of the ship doctrine was rejected in Collins v. Hand, 431 Pa. 378, 246 A.2d 398 (1968), where the Pennsylvania Supreme Court reversed a judgment against a psychiatrist for the alleged
negligence others who were not under the control or supervision of the psychiatrist when the alleged acts of negligence took place.

IN PENNSYLVANIA MEDICAL MALPRACTICE LAW, THE ‘CAPTAIN OF THE SHIP’ DOCTRINE IS APPLIED TO A VERY SMALL MINORITY OF CASES WHERE THE DEFENDANT-SURGEON IS FOUND TO BE IN CONTROL OF HIS OPERATING ROOM PERSONNEL.

In the area of anesthesia, some outside jurisdictions have rejected the captain of the ship doctrine. In Franklin v. Gupta, 81 Md. App. 345, 567 A.2d 524 (1990), the court found that, to the extent that the captain of the ship doctrine was being treated as an expansion of the borrowed servant rule, most courts have either expressly rejected it or have declared it inapplicable when the negligent actor is an anesthesiologist or nurse anesthetist. Franklin, supra. The court stated that two theories have been advanced for the rejection or limitation of the doctrine. Id. The first was expressed in Thomas v. Raleigh General Hosp., 358 S.E.2d 222, 225 (W.Va.1987):

“We reject the captain of the ship doctrine. The trend toward specialization in medicine has created situations where surgeons do not always have the right to control all personnel within the operating room…An assignment of liability based on a theory of actual control more realistically reflects the actual relationship which exists in a modern operating room.”

Franklin citing Thomas, supra. The second theory says that with the curtailment or abolition of a hospital’s charitable or governmental immunity, by statute or judicial decision, an expanded liability on the part of the surgeon is no longer necessary. Id. citing May v. Brown, 261 Or. 28, 492 P.2d 776, 781 (1972).

For now, it seems that Pennsylvania will apply the captain of the ship doctrine, where appropriate. The Pennsylvania Superior Court addressed the captain of the ship doctrine in Szabo v. Bryn Mawr Hospital, 432 Pa.Super.409, 638 A.2d 1004 (1994), and found that, in analyzing the defendant-surgeon’s motion for summary judgment, there was no evidence to support a claim that the doctor deviated from the required standard of care. However, the Court found that the trial court failed to discuss whether the doctor remained liable for medical malpractice under an agency theory, thereby ruling that summary judgment in the doctor’s favor was inappropriate. Id. at 413, citing Schneider v. Albert Einstein Medical Center, 257 Pa.Super. at 366, 390 A.2d at 1280 (citing Tonsic v. Wagner, 458 Pa. 246, 253, 329 A.2d 497, 500 (1974) (where inferences are unclear, questions of agency are for the jury’s determination).

In sum, the captain of the ship doctrine can be used as a means to assert shared liability on the part of a defendant-surgeon and a defendant-hospital for the actions of a hospital employee in very limited circumstances. Like other similar principles of agency, questions of the agency relationship that exist at the time of the claimed negligence is a question for the jury, on which a jury instruction should be supplied.

3 The borrowed servant doctrine developed under the premise that “[a] servant directed or permitted by his master to perform services for another may become the servant of such other in performing the services. He may become the other’s servant as to some acts and not others. Restatement (Second) of Agency §227 (1957).
10 See footnote #2.

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We don’t get paid until you get paid! Sound familiar? Variations of that statement are plastered all over billboards, phonebooks, commercials and magazines in our more and more litigious world. The underlying premise is that Plaintiff’s attorneys will cover the costs and expenses of bringing a lawsuit so that allegedly wronged individuals may seek restitution, regardless of their ability to pay.

What happens if a Plaintiff’s attorney also cannot cover the costs and expenses associated with bringing a lawsuit? One option is to borrow the money from private companies, a practice referred to as legal lending. Legal lending may encourage barratry, as well as create situations where power shifts may arise. According to 4-1.2 of the Florida Rules of Professional Conduct, “a lawyer shall abide by a client’s decisions concerning the objectives of representation…and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client’s decision whether to make or accept an offer of settlement of a matter.” If a client wishes to settle, it is the attorney’s obligation to settle the claim. If a client wishes to litigate despite likelihood of success or costs involved out of principle, it is the attorney’s obligation to continue to litigate. Although, attorneys are also charged with advising their client(s) regarding the decisions they must make, this role should not be influenced by the attorney’s personal preferences or potential financial gain. It is also improper for a private lender to retain the ability to make decisions in lawsuits based on the funding provided. If any of these factors are considered, the focus law suit becomes a business decision by the investor and the borrowing attorney leaving the client with little or no say which is why it is improper.

Funding may be appropriate in situations where the investor has no involvement in the litigation and is merely the source of the funds. To some extent, this would not be much different than a traditional contingency fee arrangement. However, even in these situations the borrowing attorney may be influenced by the need to repay the debt which is not discharged if a suit is ultimately unsuccessful. Thereby, creating a situation where the attorney may advise the client to continue litigating a questionable claim rather than drop the suit or settle for less than is owed. The borrowing attorney may also take into consideration that private sources of legal financing are paid back with interest sometimes exceeding 15% which is the client’s responsibility. With high costs of litigation, added interest for private loans may lead to the Plaintiff owing more than they receive from a law suit.

Attorneys also need to be aware of potential waiver of attorney-client privileged information when divulging case information to potential investors.

Legal lending is a business and private investors are not going to loan money without evaluating the claim. Providing potential investors with case background, valuation and assessments may constitute waiver of the attorney-client privilege and jeopardize confidentiality if the client consents to providing it to the investors. If there is waiver, the information may not be objected to and must be disclosed to the opposing party, if requested in discovery. The mere fact that a suit is being funded by a private lender will likely prompt new discovery inquiries, aside from the information disclosed to these lenders, as well.

In summary, legal lending creates potential for several ethical violations. This along with the risk to borrowing attorneys due to the non-dischargeable nature of legal loans may prompt the borrowers to be more selective in the suits they file that depend on financial support from a private institution. On the other hand, borrowers may view funding available through legal loans as an opportunity to take more risks and spend more money litigating, rather than settling or not filing suit, in hopes of a big return.

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After already incurring the costs of litigation, in a case where there is potentially sanctionable conduct, a prevailing party is faced with a business decision with respects to whether or not to initiate additional sanctions proceedings in an attempt to recover some or all of their costs. Incurring the additional costs to prosecute the sanctions proceedings will often deter the wronged party from taking such action. A recent Eleventh Circuit opinion may alleviate some of those cost concerns and encourage more parties to subsequently seek sanctions.

In Norelus v. Denny’s, Inc. (07-14077), the court addressed whether a party can be awarded those fees and costs that stemmed from the sanction proceedings themselves, and ruled that those costs and fees are awardable.

This interesting case involved the claims of Floride Norelus, an illegal Haitian immigrant, who worked at a Denny’s restaurant from 1993 to 1994 in various positions. Ms. Norelus alleged that for nearly a year she was sexually abused and raped by her boss and his roommate.

After Ms. Norelus retained an attorney, she reported her claims to the police and the owners of the restaurants. The restaurants’ investigation uncovered no evidence to support Ms. Norelus’s claims, and the police investigation resulted in the State Attorney deciding not to prosecute the case due to lack of evidence and inconsistencies in Ms. Norelus’s account of the events.

Nonetheless, Ms. Norelus and her attorneys filed suit in the district court seeking damages for sexual harassment, retaliation, battery, unequal pay, invasion of privacy, intentional infliction of emotional distress, false imprisonment, and negligent hiring, training, retention, and supervision.

Early in litigation it was discovered that the plaintiff’s claims were not accurate and even contradicted by several co-workers during their depositions. In addition, Ms. Norelus, herself, proved to be a less than reliable witness during her own depositions, during which she admitted to lying on her employment application and contradicted many of the allegations contained in her complaint.

Defense counseled warned Ms. Norelus’s attorneys that the case lacked merit and that the defense may seek sanctions, but Ms. Norelus’s attorneys continued to pursue the lawsuit like, as the court stated in its opinion, “Ahab hunting the whale.” Ms. Norelus’s attorneys proceeded to prepare an errata sheet to Ms. Norelus’s deposition testimony that was 63 pages long and contained 868 changes to Ms. Norelus’s testimony.

The defense first learned of this errata sheet after discovery had closed and three weeks before trial. Therefore, the defense sought a dismissal of Ms. Norelus’s complaint, arguing that the number and nature of the changes to Ms. Norelus’s testimony showed that she had perjured herself during her deposition. However, the Court denied the motion and instead ordered that Ms. Norelus’s deposition be reopened at the expense of Ms. Norelus and her attorneys.

When Ms. Norelus and her attorneys refused to pay those costs, the court dismissed the lawsuit. Ms. Norelus appealed that dismissal, but the appeal was subsequently dismissed for failing to prosecute it.

Following the dismissal of the Complaint, several of the defendants filed motions asking the court to impose sanctions against Ms. Norelus and her attorneys. At the direction of the district court, a magistrate conducted an evidentiary hearing and filed a report and recommendation. In that report, the magistrate recommended that attorney’s fees be assessed against Ms. Norelus, but not against her attorneys as the magistrate believed that Ms. Norelus’s attorneys’ “conduct did not amount to bad faith conduct justifying sanctions under 28. U.S.C. §1927.” Amlong & Amlong, P.A. v. Denny’s, Inc., 500 F.3d 1230, 1237 (11th Cir. 2007).

The defendants objected to the magistrate’s recommendations and without conducting its own evidentiary hearing, the district court sustained those objections and...
In its analysis, the Court clearly recognized that a party may be reluctant to pursue sanctions if the ultimate award is smaller than the costs of obtaining it and noted that this could lead to sanctionable conduct going unsanctioned. While this decision by the court addresses these policy considerations, the district courts should prepare for the increase of sanctions proceedings that are likely to result from this decision.

ordered Ms. Norelus’s attorneys to pay the costs and fees incurred by the defense after the filing of Ms. Norelus’s errata sheet.

Ms. Norelus’s attorneys appealed, and the case was remanded to the district court with the option of accepting the magistrate’s findings of fact and reaching its own determination as to whether sanctions were appropriate, or conducting its own evidentiary hearing as a prelude to making a new determination. On remand, the district court accepted the magistrate’s findings of fact but concluded that sanctions were appropriate after finding that a reasonable attorney would not have filed Ms. Norelus’s errata sheet and pursued the claims. The sanctions award included the costs, expenses, and attorney’s fees incurred from the date the errata sheet was submitted until the date the court initially imposed the sanctions. This award specifically included those costs and fees associated with the sanctions proceedings, and totaled $387,738.45.

Again, Ms. Norelus’s attorneys appealed, claiming that not only was it an abuse of discretion to impose sanctions against them, but it was also an abuse of discretion to include the costs, expenses, and fees arising from the sanctions proceedings themselves in the award.

The Court noted that although it had never addressed whether a district court may include costs arising from the sanctions proceedings themselves in an award of § 1927 sanctions, other circuits had addressed this issue in the context of rules-based sanctions and held that such sanctions were within the discretion of the district court. The court began its analysis by looking at the statute’s plain language and noted that it established that when awarding sanctions, “a court may include the costs, expenses, and fees that the party victimized by the sanctionable conduct incurred in obtaining the award.” Accordingly, the court noted that its analysis could end with the plain language of the statute, but instead continued to reason that “a categorical rule excluding from a sanctions award the costs incurred in obtaining would undercut the purposes of providing for sanctions.” See also In re Tutu Wells Litig., 120 F.3d 368, 387. The court further reasoned that “[t]he time, effort, and money a party must spend to get another party sanctioned realistically is part of the harm caused by that other party’s wrongful conduct.” In addition, “[a] categorical rule excluding the costs of having sanctions imposed from the award would also undermine the goal of deterrence, because it would discourage a party aggrieved by wrongful conduct from pursuing sanctions.”

Therefore, the Court affirmed the district court’s ruling, finding that the district court acted within its discretion by including the costs of sanction proceedings in its award for sanctions.

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In a time where most people are communicating via electronic mail and other social media outlets, the fine line between what is considered personal and confidential communication and what is not, is becoming more blurry. This is especially true when someone communicates from their workplace on equipment that is provided by their employer. Recently, a California Court ruled that e-mails authored by an employee were not privileged because they were sent from her workplace computer where she did not have an expectation of privacy.

In the matter of Holmes v. Petrovich Development Company, the Third Appellate District in the State of California ruled that an employee who was suing her employer for employment discrimination did not have a reasonable expectation of privacy even for e-mails that she sent to her own attorney from her work computer. The Court concluded that the e-mails sent by the employee to her attorney regarding possible legal action did not constitute "confidential communication between client and lawyer." The Court reasoned that "because Holmes used the computer of defendant company to send the e-mails even though

(1) She had been told that one of the company policies is that its computers were to be used only for company business and that employees were prohibited from using them to send or receive e-mails

(2) She had been warned that the company would monitor its computers for compliance with its company policy and thus might inspect all files and messages at any times, and

(3) She had been explicitly advised that employees using company computers to create or maintain personal information or messages have no right of privacy with respect to that information or message."

The Court found that the e-mails sent by Holmes via the company computer were “akin to consulting in her lawyer’s conference room in a loud voice with the door open, so any reasonable person would expect that their discussion of her complaints about her employer would be overhead by him.”

It is a fact that many people use their work computers to conduct personal business, whether or not their company has a specific policy regarding use of the workplace computers. For employers, this case is an important reminder that it is critically important to have a very clear policy with respect to employees’ use of workplace computers. As the Court stated, the Plaintiff in this case had previously signed an employment policy with regard to the workplace computers. The Court ultimately ruled that because the employee had signed the policy, they were aware that none of the communications that they created on the computer would be confidential.

It appears that as long as the workplace policy specifies that the employees of the business have no expectation of privacy in their electronic communications and that all of the employer provided technology is subject to the company’s monitoring, that an employee may not be able to successfully claim that communications, even with the employee’s own attorney or physician would be considered privileged and therefore non-discoverable by the employer in the event that there is any litigation from the employee against the employer.

This is helpful for companies defending employment claims. They would have the right, if they have the proper policies, to obtain communications by its employees, to obtain what otherwise may be confidential communications with the employees’ attorney if they are sending them from their work computer. For all of those who use a work e-mail to consolidate personal with professional correspondence and business, this decision may prompt consideration of using your own personal notebook or other device with a private e-mail account.

Mark Hartig is a shareholder at McCumber Daniels and practices from the firm’s Florida and Pennsylvania offices. His areas of practice include insurance defense, professional liability, general liability, auto liability, commercial litigation, nursing home, hospital and medical malpractice defense litigation. Email Mr. Hartig at mhartig@mccumberdaniels.com
SPEAKING EVENTS

Cathleen Kelly Rebar is scheduled to present on April 4, 2011 at the American Conference Institute’s (ACI) Long Term Care Litigation Conference in Miami, Florida. Ms. Rebar will present on a panel of litigation attorneys on the topic of “Developing Winning Defense Strategies in Tried and True Areas of Liability: New Science to Use in Falls Cases, Medication Errors, Pressure Ulcers and Infectious Disease Litigation.”

John McGreevey is scheduled to present on February 12 at the 2011 American Society of Diagnostic and Interventional Nephrology (ASDIN) conference. The title of Mr. McGreevey’s presentation is “When a Serious Adverse Event Occurs—Legal Aspects of Interventional Nephrology.”

NEW ADDITION

McCumber Daniels welcomes Kevin Elmore as the newest associate in the Firm’s Florida office. Mr. Elmore’s practice focuses on insurance and professional liability defense including medical and dental malpractice, first and third party insurance, long term health care and workers compensation defense. Mr. Elmore is licensed to practice before all Florida state and federal courts including the United States District Courts for the Northern, Middle and Southern Districts.

IN THE NEWS

Andrew McCumber contributed an article to the Florida Health Care Association’s December 2010 newsletter, Pulse. Mr. McCumber’s article, “Encouraging Fair Practices and Mutual Understanding Regarding Arbitration Agreements” appears on pages 10-11. This article provides long-term care providers with guidance on drafting arbitration agreements that comply with state and federal law. It also gives suggestions on recommended policies and procedures to ensure that facility staff properly communicate with residents and their families when executing an agreement to arbitrate any future dispute that may arise.

On November 30, 2010 Judd Goodall co-presented at the American Conference Institute’s (ACI) National Advanced Forum on Bad Faith Litigation in Orlando, Florida. The program, “Current Events in Bad Faith: The Gulf States” utilized the BP oil spill in the Gulf of Mexico as a backdrop for the discussion.

Drew Rothman published an article titled, “Going Through the Motions: How to Succeed in Discovery Court” in the Fall, 2010 edition of the Pennsylvania Bar Association’s, Young Lawyers Division At Issue.
McCumber Daniels is a full service, Martindale-Hubbell AV-rated civil litigation firm with offices in Florida and Pennsylvania. McCumber Daniels offers a wide variety of litigation services for insurers, health care facilities, businesses and licensed professionals. With years of legal, corporate, medical, administrative and legislative experience, we are able to provide full-service representation for all of our clients in all types of disputes or litigation.

McCumber Daniels attorneys are well versed in applicable law, procedure, courtroom tactics, legal and evidentiary rules, as well as the analysis and application of medical or financial information. Our attorneys provide thorough investigation, negotiation, trial, and appellate services our clients expect and deserve.

McCumber Daniels employs full time nurses as part of its permanent staff to support our medical and personal injury defense practice. The nurses quickly provide organization of medical documents and a preliminary analysis of the medical issues involved in each case. Their contributions are a value added asset to the attorney assessing and defending the case.

Please visit our website to find out the latest legal news, seminars, speaking opportunities and firm news.

For more information on anything that you have read today, please contact Andrew McCumber at amccumber@mccumberdaniels.com