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BCJA Member Newsletter

February 2011

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PRESIDENT'S MESSAGE

January 8, 2011 - A nice sunny afternoon at Fort Lauderdale Beach. 75 degrees. No humidity. Light breeze. Perfect South Florida weather for early January. Families from up North who have escaped the snow have victoriously made it down here to soak up a few rays of sun and enjoy our paradise. We locals wonder how those folks can live in such extreme cold, and we chuckle at the glare shining from their pale skin. Alas, there is the familiar smell of Coppertone and there are smiles abound. It seems that all is right with the world.

As we get into the car with some remaining sand in our shoes, we hear on the radio about a shooting rampage at a public service event in Arizona. News reports say that the shooter was targeting a Congresswoman known for standing up to political pressure and voting with her conscience. We learn that a nine-year old girl who was newly-elected to her student council, as well as a federal judge are among the dead. More information about the shooter comes to light. The news outlets say the assassin has a criminal record, a history of psychiatric treatment, had recently been denied entry into the armed forces, and had regularly been posting threats to government agencies on various websites.

Only days prior to this shooting, Congresswoman Giffords was among many Representatives who read parts of the Constitution from the House floor. She read the First Amendment which mandates that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

On that fateful morning, she was doing just that - serving her country by holding a Congress on Your Corner event outside a grocery store. This is exactly what representative government is all about. All of the people at that event were active political participants. The organizers dedicated their time and effort to further the cause of self-governance. The attendees felt strongly enough about the issues in their community to go out and make their voices heard to those whom they had elected.

Before the massacre, the scene in Arizona was as pure and as direct as democracy can be. It is what our Founders envisioned for our political process: Elected officials meeting directly with their constituents. The

nine-year old girl, born on September 11, 2001, already having such a strong sense of freedom that she seeks to serve her fellow students, and going to the event that morning to experience firsthand the magic of our system. In all of this horror, we must never forget how important the work was that the victims were doing. How vital their efforts were to the conservation of our liberty. How their experiences truly are our experiences, and how this is all so uniquely American.

So as we give thanks for our endless South Florida sunshine during the heart of winter, and as we approach our 2011 Legislative session, we would do well to reflect on how critical our political process is, how strong it remains, and how essential we really are to its preservation.

For those of you who would like to personally engage in the legislative process and, in a small but meaningful way, honor those who were doing the same in Arizona, please join us as we meet with our state legislators during this year's upcoming session in Tallahassee, beginning on March 8, 2011 and running through May 6, 2011.

As we all know, this will be an especially challenging legislative year for the cause of justice. Accordingly, the Board of Directors has authorized financial assistance to aid in our efforts at educating our representatives about our issues. BCJA will assist with the reasonable cost of airfare for up to five of our members so that we can have a strong presence up there this year. Obviously, we encourage as many members as possible to participate. We are coordinating with the Florida Justice Association and arrangements have been made for you so that from the moment you get off of the airplane your experience over those few days will be substantive, memorable, and most importantly, effective. Please contact me at 954-475-1890 or email me at ellsley@ellsleysobol.com for more information.

As always, thank you for your continued support of BCJA.



Rick Ellsley

Tuesday, February 1, 2011

Riverside Hotel 620 E. Las Olas Blvd.

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5:30 - 7:00 PM: Cocktail Hour

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6:10 - 7:00 PM: Case Evaluation

Current issues in law, civil evidence and procedure

7:00 - 8:30 PM: Dinner and Program

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BROWARD COUNTY, FLORIDA.**

RECENT CASES OF INTEREST

By Nancy Little Hoffmann

SPECIAL TRIAL LAWYER TIP: CONSULT A TAX LAWYER BEFORE AGREEING TO A CONFIDENTIALITY CLAUSE IN YOUR SETTLEMENT AGREEMENT

An issue which arose in recent settlement negotiations in one of our cases was the potential tax effect of a confidentiality clause in personal injury settlements. Although settlement proceeds received "on account of personal physical injuries" is excludable from gross income, any portion of the amount paid by the defendant as consideration for a confidentiality agreement may be considered taxable. **At least one Tax Court decision has so held: *Amos v. Commissioner of Internal Revenue*, 2003 WL 22839795 (U.S. Tax Court December 1, 2003).** Another reason not to agree to confidentiality, at least until you have competent tax advice.

NEW TRIAL/ATTORNEY MISCONDUCT

Resolving a conflict between districts, the supreme court held that in order to preserve the issue of attorney misconduct for a trial court's review of a motion for new trial, if a contemporaneous objection was sustained, the party must also timely move for a mistrial. If the objecting party fails to do so, then the conduct is subject to the fundamental error analysis set forth in *Murphy v. International Robotic Systems, Inc. Companioni v. City of Tampa*, 35 Fla. L. Weekly S738 (Fla. December 16, 2010).

PREJUDGMENT INTEREST

Receding from its 1992 opinion in *McGurn v. Scott*, 596 So. 2d 1042 (Fla. 1992), the supreme court held that in the interest of promoting judicial economy and preventing unfairness to either party, a final judgment reserving jurisdiction to award prejudgment interest will now be considered is a final appealable order. The court further held that the trial court does not thereby lose jurisdiction to determine prejudgment interest, but that it should be determined in a manner similar to that in which the trial court addresses attorneys' fees and costs. ***Westgate Miami Beach, Ltd. v. Newport Operating Corporation*, 35 Fla. L. Weekly S735 (Fla. December 16, 2010).**

PRODUCT LIABILITY/TOBACCO

In the first "*Engle Progeny*" case to reach a district court of appeal, the First District upheld an award of compensatory and punitive damages to the widow of a deceased smoker. The court held that the trial court properly applied the supreme court's ruling in *Engle*, and that the individual plaintiffs could rely on the factual findings by the jury in the *Engle* class action and thus need not independently prove up the facts proven in that litigation. The First District further found that the plaintiff presented sufficient independent evidence of causation and reliance on misleading advertising, and upheld the punitive damages award of 25 million dollars "in view of the evidence of decades-long wanton conduct" by the defendant. ***R. J. Reynolds Tobacco Company v. Martin*, 35 Fla. L. Weekly D2754 (Fla. 1st DCA December 14, 2010).**

Nancy Little Hoffmann is a Board-Certified Appellate Lawyer practicing in the Fort Lauderdale area since 1974. She may be contacted at 954-771-0606 or by e-mail at NLHappeals@aol.com.

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SCENES FROM JANUARY MEETING

Photos Courtesy of Patti Weinstein



Michael Goodman
Ted Leopold
Seth Lehrman



The Honorable Peter Weinstein
Magistrate Philip Schlissel
The Honorable William Haury
Scott Bugay



Paul Finizio
Rick Smuckler
Thomas Fallarino



The Honorable Jeffrey Streitfeld
Rick Ellsley



Carrie Barros
The Honorable Jeffrey Levenson
Donna Kadosh



Steven Jaffe
Ted Leopold



Bob Rogers
Bob Murphy



Steven Jaffe
Paula Rubinstein
The Honorable John Luzzo



Laura Dolin
Anthony White

STORY IDEAS FOR A PERSONAL INJURY BLOG

By Margaret Grisdela



Is a personal injury blog part of your 2011 marketing plan? If so, you are likely to discover an effective new way to increase your search engine visibility, attract new clients, and generate more referrals from non-competing attorneys.

Set a goal for yourself of at least one post per week. While more is better, a single article should be achievable. Each blog post should contain at least 250-300 words. Keywords should be featured in the body copy and, if possible, in the headline.

You can use a service like HootSuite.com to automatically feed your blog posts to a Twitter account using your blog RSS feed. If you do this, remember to write your blog post so that the essence of the story is captured in the first 125-130 characters (allowing a few characters for a link to the full story).


About the Author: Margaret Grisdela is the author of *Courting Your Clients* and president of *Legal Expert Connections*, a national legal marketing agency offering social media and Internet marketing services. Reach her at 561-266-1030 or mg@legalexpertconnections.com

There are two basic components to a blog. The first is the technology platform, and the second is the blog copywriting.

The technology needed to build a blog is readily available at a variety of price points from free to fee. This is the easy part. Telling your law firm's story in a blog on a consistent schedule is the challenging part of a blog for most busy PI attorneys.

Here are a five subject ideas you can use to keep your blog content fresh and frequent:

1. Product recalls
2. Current PI-related cases or news events
3. Dangerous products that are causing injuries
4. Google alerts that track topics of interest to you
5. Tips (i.e., what to do if you are in an accident)



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2011 MEETING CALENDAR

Tuesday, March 1
Tuesday, April 5
Tuesday, May 3
Tuesday, June 7
Tuesday, September 13
Tuesday, October 4
Tuesday, November 1

MONTHLY MEETING AGENDA

Riverside Hotel, Las Olas Blvd.
5:30 - 7:00 PM: Cocktail Hour
Sponsored by Sabadell United
6:10 - 7:00 PM: Case Evaluation
Current issues in law, civil evidence and procedure
7:00 - 8:30 PM: Dinner and Program
Date, time, location and agenda may be subject to change.

MINOR SETTLEMENTS

THREE DIFFERENT TYPES OF GUARDIANSHIP SCENARIOS



It is important for attorneys whose practice includes third party claims such as personal injury to understand when a guardianship is required with regard to the settlement of a claim for a minor. There are three possible scenarios upon settling a minor claim:

1. The gross and net settlement both do not exceed \$15,000.00. No guardianship is required and the parents may collect the proceeds as the natural guardian(s) of the minor.

2. The gross and the net settlement exceed the sum of \$15,000.00 resulting in the appointment of a guardian of the property for the minor.

3. The gross settlement is over \$15,000.00 but the net settlement is under \$15,000.00.

An Order approving the minor settlement needs to be obtained either in the general division of the circuit court

(typically done when a complaint has been filed) or the Probate Court.

The statutory basis for the appointment of a guardian of the property may be found in Florida Statute 744.301 titled "Natural guardians". This statute provides that the mother and father jointly are natural guardians of their own children. The natural guardians are authorized to take certain action regarding their children's property including "a) settle and consummate a settlement of any claim or

cause of action accruing to any of their minor children for damages to the person or property of any of said minor children or b) collect, receive, manage and dispose of the proceeds of any such settlement... without appointment, authority, or bond, when the amounts received, in the aggregate, do not exceed \$15,000.00".

Implicit in the above quoted authorization is the requirement that when the amounts received in the aggregate DO exceed \$15,000.00 the natural guardian is no longer authorized and a formal guardian of the property must be appointed.

However, it is unclear from the language in Florida Statute 744.301 whether we look at the gross or net proceeds for fixing the limitation on the natural guardian's authority to collect, receive, manage and dispose of the proceeds of the minor. It seems most likely that "the amounts received in the aggregate" refer to net proceeds to the minor because 1. The phrase used in the provisions governing when a guardian ad-litem may be appointed under Florida Statute 744.3025 is "gross settlement of the claim". Why would the legislature use different phrases for the natural guardian and guardian ad-litem unless the meanings are different? Also, the full body of 744.301 seems to imply "net" because what is referred to as being aggregated are amounts actually "received" and the conduct "collect, receive, manage and dispose of" is conduct more apt in the handling of net proceeds.

Scott R. Bugay, Esq., has been practicing law in Florida since 1994 and is a recent member of the Broward County Justice Association. His practice involves probate, guardianship and social security disability. He can be reached at (954) 767-3399.

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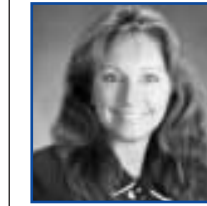
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