



May 2013

Vol. 30, No. 5

THE DICTA

The Docket

May 14 (Tuesday)
DAYL Lawyers Promoting Diversity Committee Meeting
Noon, Belo Mansion

May 15 (Wednesday)
DAYL Young In-House Counsel CLE
Noon, Belo Mansion

May 15 (Wednesday)
DAYL Swearing In Ceremony
4:00 p.m., Belo Mansion

May 16 (Thursday)
DAYL Animal Welfare Committee Meeting
Noon, Belo Mansion

May 18 (Saturday)
DAYL Ask-A-Lawyer Program
10:00 a.m., Lochwood Library

May 20 (Monday)
DAYL Solo & Small Firm Committee Meeting
Noon, Belo Mansion

May 21 (Tuesday)
DAYL Elder Law Committee Meeting
Noon, Belo Mansion

May 22 (Wednesday)
DAYL Generation Generosity Event
6:00 p.m., Community Partners of Dallas

May 28 (Tuesday)
DAYL Aid to the Homeless Committee Meeting
Noon, Belo Mansion

May 28 (Tuesday)
DAYL Lawyers Promoting Education Meeting
Noon, Belo Mansion

May 29 (Wednesday)
DAYL Equal Access to Justice Committee Meeting
Noon, Belo Mansion

May 30 (Thursday)
DAYL Social
6:00 p.m., Prime Bar

May 31 (Friday)
DAYL CLE Committee Meeting
Noon, Belo Mansion

June 6 (Thursday)
DAYL Wine Tasting
6:00 p.m., Sammons Center for the Arts

DAYL ONE TO WATCH

Ross Williams has been selected as the May 2013 DAYL One to Watch! To find out why, visit www.dayl.com.

DAYL Social at Prime Bar

Join DAYL as we kick-off patio season with our May Social at **Prime Bar** on **Thursday, May 30th**, beginning at 6:00 p.m. Prime Bar is located at 2520 Cedar Springs Road. Our gracious sponsor, FileSafely, will provide a variety of appetizers and two drinks per person, plus a door prize for a lucky winner. The cost to attend is \$3.00 for DAYL members and \$5.00 for non-members.

FileSafely is an affordable, easy-to-use Dropbox add-on application. FileSafely takes your Dropbox to the next level by

transforming it into a secure, compliant, document sharing solution to use with clients and team members. FileSafely offers document viewing controls, document printing and saving controls, confidentiality watermarks on PDFs, customizable branding, additional document encryption, and audit reporting that allows you to see who accessed your information and when. For more information, visit them online at www.filesafely.com.

Bring your business card for a chance to win one of two \$100 gift certificates to Golfsmith.com.

Wines and Beer to be Featured at the DAYL Annual Wine Tasting

Don't miss this year's Equal Access to Justice Wine Tasting benefiting the Dallas Volunteer Attorney Program. The Wine Tasting will be held on **Thursday, June 6, 2013**, beginning at 6:00 p.m., at the Sammons Center for the Arts, 3301 Harry Hines Blvd. in Dallas.

This year's Wine Tasting will feature food and wine from France and beer from local breweries. Complimentary valet parking will be available.

At the event, DAYL will present the Young Lawyer Pro Bono Service Award. **Charlie Gearing**, an associate at Haynes and Boone will be the 2013 recipient of the Award. Mr. Gearing, a 2009 graduate of Vanderbilt Law School, donated approximately 560 hours of pro bono work in 2012, handling numerous types of cases for organizations such as the Dallas Volunteer Attorney Program, Human Rights Initiative, Dallas

After School Network, and Habitat 4 Paws, serving as its legal advisor.

The Wine Tasting is always fun, provides great networking opportunities, and most importantly, helps raise funds for the Dallas Volunteer Attorney Program, which provides free legal services to indigent citizens of Dallas.

Tickets for the event are \$25 in advance, \$35 at the door and \$15 for government employees, law clerks, law students and interns.

Email **Cherie Harris** (cherieh@dayl.com) for ticket information.

Save the Date
DAYL
Dinner and Dialogue
July 18, 2013
6:00 p.m.
Belo Mansion

THE DICTA

Paul Simon, *Editor*

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Copy Deadline for June Issue:

May 15, 2013

Paul Simon

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Email: pauls@colesfirm.com

The views expressed in *The Dicta* do not necessarily reflect the views of the Dallas Association of Young Lawyers.

From the President

Spring Clean Your Professional Life



Sarah Rogers

It's that time of year again—Spring Cleaning. We all know what that means at home – cleaning out the clothes that you haven't worn in years, emptying out your junk room - yes, we all have one – or, maybe getting around to planting new flowers in your garden. In the springtime, we should also take the opportunity to spring clean our professional lives. Here are several ways to do just that:

1. **Reach out to a Potential Client** – You know that you need to network to get clients. In the past year, you attended dozens of events, gathered hundreds of business cards, and they have been sitting in a drawer in your desk since then. Take the time to go through those business cards, as well as your contact list of current clients and make a list of the top five clients or potential clients to reach out to. Whether it is a new potential client or maybe a current client that you haven't spoken to in a while, take the time to reach out to them.

2. **Work with a Different Supervisor** – We all fall into familiar routines, working with the same supervisor or others on case after case. Take the time this spring to reach out to a supervisor or partner who you have always wanted to work with, but haven't made the time to reach out to. Whether you want to learn a different strategy, approach, or maybe even a different area of the law, take the time to approach someone new about working

with them and learning a different perspective. You will benefit and the partner will be flattered that you asked.

3. **Be a Mentor** – Regardless of what stage you are at in your career, there is someone less experienced than you that could benefit from your advice. That person may be a law student, a young associate, or a senior associate. In addition, there are many different ways to be a mentor – formal and informal. You can become a mentor by taking a few minutes out of your day to have coffee with someone who may be in need of your advice. You will both benefit if you take the time to do so.

4. **Get Involved in Organizations** – As lawyers, each of us are asked to be members of many different organizations or groups – law-related, non-profit, community groups, national associations. But getting the most out of these memberships requires a minimum commitment of time and effort. That minimum effort could be taking the time to read the newsletter, joining and actively participating in a committee, or listening to a quarterly webinar. Spring Clean your professional resume by identifying those organizations who offer the greatest potential value to your personal and professional development. Now purposefully find a way to get involved, give back, and get the most of out of your memberships for the rest of this year.

The DAYL Swearing-In Ceremony will be held on Wednesday, May 15, 2013 beginning at 4:00 p.m. at the Belo Mansion. The Honorable Lana Myers, 5th District Court of Appeals, will swear in the newly-licensed attorneys.

Participants MUST bring their letter indicating that they have met all criteria and are ready to take the oath. The Swearing-In Ceremony is free, and family and friends are welcome to attend.

RSVP is required to Cherie Harris (cherieh@dayl.com).

DAYL Summer Softball Sign-Ups

-2013 DAYL Softball Application-

Firm Name: _____
 Team Name: _____
 Team Manager: _____
 Manager's Work Address: _____
 Manager's Email Address: _____
 Work Phone : _____ Fax: _____
 League Preference
 Men's Competitive Non-Competitive Co-Ed

Return this application along with payment of \$650.00 (made payable to DAYL) to Cherie Harris, DAYL, 2101 Ross Avenue, Dallas, Texas 75201 no later than **May 15, 2013**. Contact Matt Daniel (mdaniel@lawyerworks.com).

TEAM ROSTER (attach additional page, if necessary)

Player Name	DAYL Member	Clerk	Non-Attorney
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Join the DAYL Young In-House Counsel Committee on May 15, 2013 at noon at the Belo Mansion for a CLE on reading financial statements.

This CLE will cover some of the basics of financial statements and then take a deeper dive into understanding financial statements. The program will be presented by Mark Melton with Hunton & Williams.

DAYL's Ask-A-Lawyer Committee and DVAP are teaming up to provide free legal advice to the Dallas community on Saturday, May 18 from 10am-12pm. at Lochwood Library. Lawyers are needed to provide free legal advice.

To volunteer or receive emails about upcoming opportunities, contact Leslie Chaggaris at leslie.chaggaris@rgmfir.com.

Don't Fall into the Traps of the New Rules

by Jennifer M. Larson

In case you missed it, DAYL's CLE Committee recently sponsored a panel discussion to discuss the new and amended Texas Rules of Civil Procedure that went into effect on March 1. The panel included **Judge Martin Hoffman** (68th Judicial District Court), **Judge Ken Tapscott** (County Court at Law Number 4), and **Bryan Pope** (McClarty Pope). The program was moderated by Abigail Moore (Locke Lord). Here are a few traps presented by the new rules for young lawyers to avoid:

1. Under TCRP 47(c), make sure your petition includes a statement regarding the amount of monetary damages sought. If this is not included in your petition, you may not engage in discovery.
2. TCRP 91a provides for a new motion to dismiss baseless causes of action.

Make sure you think twice before filing this motion because TCRP 91a includes a fee-shifting provision. If you file a motion under this rule and later determine that you may not prevail, you can file a motion to withdraw the motion at least 3 days before the hearing. Then, and only then, a court may not rule on the motion.

3. TCRP 169 provides an expedited

process for claims under \$100,000.00. An expedited trial setting does not appear to be automatic. "On any party's request, the court must set the case for a trial date that is within 90 days after the discovery period in Rule 190.2(b)(1) ends." So, if you fall within the expedited rules and you would like an expedited trial setting, you should request the expedited trial date.

Considering Participation in the 2013 DAYL Leadership Class?

Application Deadline is June 7, 2013.

Visit www.dayl.com/pdf/leadership.pdf for an Application.

Volunteers Needed to Host Lawyers from Across the Globe

The DAYL International Committee needs volunteers to host lawyers from across the globe participating in the Academy of American and International Law (the “Academy”).

The Academy is a six week program held at the Center for American and International Law in Plano, Texas. Each year, lawyers and judges from outside of the United States come to study American law and process at the Academy. In the past, Academy participants hailed from over forty countries and six continents.

The DAYL International Committee, in coordination with the North Texas Council for International Visitors, organizes local volunteers to act as ambassadors to the visiting Academy participants. The volunteers, or

Community Program Directors (“CPDs”), are responsible for creating a welcoming environment by attending Academy networking and social events. CPDs may also assist individual Academy participants with their needs like transportation or shopping.

The Academy begins May 19, 2013 and continues through June 28, 2013. As the date approaches, the DAYL International Committee will begin matching volunteers with groups of Academy participants. The DAYL International Committee will also provide CPDs with a detailed calendar of events.

Volunteering comes highly recommended. In the past, CPDs have made lifelong friendships with the Academy participants. Most importantly, participation in the Academy is fun.

Lawyers interested in volunteering to host Academy participants should contact the DAYL International Law Committee chairs: **Barbara Nicholas** (barbara.nicholas@dallascounty.org), **Vishal Chander** (vchander@chanderlaw.com), **Andres Correa** (acorrea@lynllp.com) or **Ryan Sadkin** (ryan.c.sadkin@gmail.com).

Trivia Bowl Playoffs will be held Tuesday, May 14 beginning at 7:00 p.m. at Craft & Growler.

Come watch the fun!

Baker Botts Wins DAYL Basketball League Championship

by Margaret Allen

On Monday, April 22, in the hallowed gym of St. Mark’s Presbyterian Church known for its unreliable air-conditioning, eerie lighting, and ability to elicit the best athletic performances by our local young lawyers, Baker Botts capped its undefeated 13-0 season by clinching the championship against Weil, Gotshal & Manges’ Weilcats. In a thrilling second half, the Weilcats rallied to tie the game 23-23. But Baker Botts answered swiftly to secure the win.

IP associates and offensive legends **Ebby Abraham** and **Osman “Ozz” Siddiq** were on fire, with multiple blocks and assists, and corporate associate **Ryan Scofield** remained up in the faces of the Weilcats star players.

It’s hard to believe that this team,

who so dominated the league this year, had only one other previous playoff win in the last three years.

The winning season was the definition of team effort, with litigation



associate **Chequan Lewis** leading the scoring charge. “There was never a time where our team sat around and waited on one guy to deliver,” said Mr.

Lewis. “We all carried the team together.” Teammate Jordan Flourney agreed, “We played against plenty of good players -- players that were probably better individually than any one person on our team -- but I think we were a better ‘team.’”

Scott Drake and **Adam Boyd**, commissioners for the last three years, were especially pleased with the league’s success this year. “We had a record number of teams participate in the league, including some long time participants as well as some new faces,” said Mr. Boyd. “The league provides DAYL members with a valuable opportunity to get to know each other a little bit better while at the same time engaging in some

friendly competition. It’s a great way to spend time away from the office with your colleagues and also support DAYL.”

Mistaken Indemnity – The Breadth and Challenges of Chapter 82

by Dan McGuire

Nearly 20 years ago, the Texas legislature passed Chapter 82 of the Civil Practice and Remedies Code, a statute that may impact many of the thousands of product liability cases filed in Texas each year. The purpose of the statute was to expand the indemnity rights of innocent sellers against manufacturers of allegedly defective products. Yet, few litigants or courts fully understand the statute's breadth and scope. Fewer still have actually litigated the issue. Indeed, a basic Westlaw search yields less than 70 federal and Texas cases addressing Chapter 82. Thus, even a rudimentary understanding of this indemnity system may provide an analytical head start in a statute that has proven to be anything but clear.

Chapter 82 requires manufacturers to indemnify sellers against "loss arising out of a products liability action," except for loss independently caused by the seller. TEX. CIV. PRAC. & REM. CODE § 82.002(a); *Meritor Auto., Inc. v. Ruan Leasing, Co.*, 44 S.W.3d 86, 87 (Tex. 2001).¹ On its face, the breadth of the indemnity system under Chapter 82 is striking. A seller is entitled to indemnity for all loss – broadly defined to include not only damages, but reasonable attorney's fees and other expenses. § 82.002(b). The seller is entitled to indemnity "without regard to the manner in which the action is concluded," meaning that even a seller who settles the claims against it is entitled to indemnity. § 82.002(e)(1). Moreover, a seller seeking Chapter 82 indemnity from a manufacturer is not required to prove "causation" or any of the other traditional product liability elements. See *Oasis Oil Corp. v. Koch Refining Co. L.P.*, 60 S.W.3d 248, 255 (Tex. App.—Corpus Christi 2001, pet. denied).

The relationship between the parties and the allegedly defective product has

played a central role in the few cases that have addressed Chapter 82. For instance, the Texas Supreme Court held that a seller who did not sell the product alleged in the lawsuit was entitled to indemnity from the product's manufacturer under Chapter 82. See *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-69 (Tex. 1999). More recently, the court held that a manufacturer is only required to provide indemnity for its particular products because Chapter 82 is "premised on a nexus between a given manufacturer and its product." *Owens & Minor, Inc. v. Ansell Healthcare Prods., Inc.*, 251 S.W.3d 481, 485 (Tex. 2008).

Other nuances of the system have yet to be determined. Component parts, for example, pose a complex analytical problem under Chapter 82. Although the Supreme Court has held that a component part manufacturer has a duty to indemnify a seller only when its particular component part is alleged to be defective, see *General Motors Corp. v. Hudiburg Chevrolet, Inc.*, 199 S.W.3d 249, 257 (Tex. 2006), no court has yet to determine how or to what extent multiple allegedly-defective product manufactures are required to indemnify a common finished-product seller.

Likewise, the determination of a seller's independent liability has proven difficult to apply. To avoid the duty to indemnify, a manufacturer must prove that "the seller's independent conduct caused the loss." *FLS Miljo, Inc. v. Munters Corp.*, 682 F. Supp. 2d 681, 689 (N.D. Tex. 2010). Although "merely selling a defective [product is] not independent liability," a seller who has a "product altered in a way that causes loss is not, at least in relation to the manufacturer, innocent, even if the seller cannot be held liable to an injured plaintiff for its conduct." *Hudiburg*, 199 S.W.3d at 259-60. Further defining which alterations constitute independent liability will be problematic where multiple com-

ponents are incorporated into a single finished product at different stages of production.

It remains to be seen whether the statute will retain its breadth as Chapter 82 indemnity demands become more common and parties seek judicial interpretation of the statute. For now, much of Chapter 82 is a blank canvas, and it will fall to attorneys to use the brush of legal reasoning to determine the future of this often misunderstood indemnity system.

¹Although the statutory definitions of the terms "seller," "manufacturer," and "product liability action" are critical to comprehending the statute, these terms are self-explanatory for purposes of this article.

Dan McGuire is a trial lawyer and litigation associate with Thompson, Coe, Cousins & Irons LLP. His practice focuses on complex litigation matters involving commercial disputes, personal injury, and property damage claims.

The Dallas Bar Foundation and Bar None Production Company present Bar None XXVIII: Downton Att'y. Watch Dallas area lawyers and judges sing, dance and make you laugh so hard your sides hurt. Proceeds benefit the Sarah T. Hughes Diversity Scholarship at the SMU Dedman School of Law.

**7:30 p.m., June 12, 13
8 p.m., June 14, 15
Greer Garson Theatre, SMU
www.barnoneshow.com
Contact Elizabeth Philip,
ephilipp@dallasbar.org for
ticket information.**



DAYL does Kickboxing at Title Kickboxing



Landing the Job: How to Make the Most of Your Summer Experience and First Year as a Lawyer panel: James Sheppard, Joseph Hummel, Aaron Burke, and Mahsa Sobeil



DAYL Animal Welfare Committee team at SPCA Strut Your Mutts event



DAYL Home Owners' Associations CLE (l to r) Jennifer Larson, DAYL CLE Committee; Panel member Greg Fell; Panel member Dean Riddle; Panel Member Mark Castillo; and Moderator Andy Jenkins

Join DAYL for its May Generation Generosity event at Community Partners of Dallas as we volunteer together to organize supplies for young victims of child abuse. Kids are welcome to participate.

Wednesday, May 22
6:00 p.m. – 8:00 p.m.

Contact Cherie Harris to volunteer
Additional details will be sent to all volunteers a few days prior to the event.

For more information about this organization, please visit www.communitypartnersdallas.org.

Help judge the TYLA's 38th annual State Moot Court Competition on June 18-20, 2013 in Dallas. Volunteers are needed in the following preliminary rounds:

June 18th at 9:00 a.m.; 11:00 a.m.; 2:30 p.m.; and 4:30 p.m.
June 19th at 9:00 a.m.; 11:00 a.m.; and 2:30 p.m.

If you are willing to serve as a judge or if you have any questions, email zeke.fortenberry@gmail.com with the following information: (1) your cell phone number; (2) preferred email address; (3) law school attended; (4) graduation year; and (5) which day(s)/time(s) you are signing up to judge!