DEFENSE NEWS

Fighting for Justice and Balance in Civil Courts

WDTL
WASHINGTON DEFENSE TRIAL LAWYERS
Fighting for Justice and Balance in Civil Courts

Product Liability Standards Under the Washington Product Liability Act for Sellers and Manufacturers

By Ken M. Roessler, Forsberg & Umlauf, P.S.

This article briefly explains the differences in tort liability standards set out in the Washington Product Liability Act (WPLA) for sellers and manufacturers of products, discusses some of the statutory exceptions that impose the liability of a manufacturer onto a seller, and provides examples from Washington case law. What follows is a discussion of the basic differences between seller liability and manufacturer liability under the WPLA.

1. A Manufacturer Is a Seller, But a Seller Is Not Necessarily a Manufacturer

All salmon are fish, but not all fish are salmon. Similarly, all manufacturers are sellers, but not all sellers are manufacturers. If your client is sued for a product-related injury, it generally makes quite a difference whether your client made the product or just sold it. If your client was simply in the chain of distribution, i.e., a wholesaler, distributor, or retail seller, and didn't put its own label or name on the product, then it is generally subject to a negligence liability standard. If, however, it manufactured or designed the product, then it is subject to a strict liability standard. However, there are exceptions such as when the manufacturer is insolvent or beyond the jurisdictional reach of a Washington court, or where the seller is the controlled subsidiary or parent company of the manufacturer.

Under the WPLA, a product manufacturer is generally subject to a modified form of strict liability. The classic example that explains the public policy considerations behind strict products liability is this: if a widget comes off the assembly line with a sharp, jagged edge, and that jagged edge injures an unsuspecting user, the legal system will not concern itself with how careful the widget manufacturer may have been. The product is by definition "defective" and "unreasonably unsafe" because the widget as manufactured departed from its intended design and the focus is on the product itself. If the defect caused the injury, then the manufacturer is liable, regardless of how non-negligent or careful the manufacturer might be. Granted, this example illustrates a "defect in construction," which is arguably the easiest of the three types of product defects to prove.[1] But the rationale of strict liability still applies for the other two types – defective design, and inadequate warning – albeit with some nuances and balancing of pros and cons, considerations of social utility and alternative safer designs vs. the likelihood and magnitude of harm posed by the existing design. Seller liability is not quite as complicated, and it's also not as easy for plaintiffs to prove. Again, a "seller" under the WPLA is understood to be a non-

Continued on Page 2

Fall 2008

IN THIS ISSUE

Editor: Grant Lingg
T. 206.689.8500 | F. 206.689.8501 glingg@forsberg-umlauf.com

Editor: Jody K. Reich
T. 425.275.0551 | F. 425.776.2467 jody@detsparlaw.com

WDTL
WASHINGTON DEFENSE TRIAL LAWYERS
Fighting for Justice and Balance in Civil Courts

DEFENSE NEWS

The Defense News is published bi-monthly by the Washington Defense Trial Lawyers, c/o WDTL, 800 5th Ave., Suite 4141, Seattle, WA 98104. **SUBSCRIPTION:** Included in dues of all active members. **EDITORIAL POLICY:** Defense News is edited for members of the Washington Defense Trial Lawyers. Publishing and editorial decisions are based on the editors' judgment of the quality of the writing, the timeliness of the article, and the potential interest to Defense News readers. The views expressed in the Defense News are those of the authors and may not reflect the official policy or position of WDTL or Defense News. **SUBMISSIONS:** All submissions must be typewritten, double-spaced (including citations). Include with the article an electronic format – either by email or disk. Articles may be submitted to kristin@wdtl.org or glingg@forsberg-umlauf.com. **ADVERTISING:** All advertising inquiries should be directed to: Kristin Lewis, 800 5th Ave., Suite 4141, Seattle, WA 98104, (206) 749-0319 or e-mail: kristin@wdtl.org

Defense News does not screen its advertisers/advertisements and does not vouch for the quality of the services offered for sale herein.

Product Liability *From Page 1*

manufacturing seller. Sellers must be shown to be *negligent* for product liability to attach, but there are a few exceptions, as discussed below.

The WPLA defines "product seller" as "any person or entity ... engaged in the business of selling products, whether the sale is for resale, or for use or consumption. The term includes a manufacturer, wholesaler, distributor, or retailer of the relevant product. The term also includes a party who is in the business of leasing or bailing such products.The term . . . does not include [home sellers, professional service providers, etc.]." RCW 7.72.010(1).

Conversely, the WPLA defines "manufacturer" as "a product seller who designs, produces, makes, fabricates, constructs, or remanufactures the relevant product or component part of a product before its sale to a user or consumer. The term also includes a product seller or entity not otherwise a manufacturer that holds itself out as a manufacturer." Also, a "product seller acting primarily as a wholesaler, distributor, or retailer of a product may be a 'manufacturer' **but only to the extent**

Continued on Next Page

Product Liability *From Page 2*

that it designs, produces, makes, fabricates, constructs, or remanufactures the product for its sale. A product seller who performs minor assembly of a product in accordance with the instructions of the manufacturer shall not be deemed a manufacturer. A product seller that did not participate in the design of a product and that constructed the product in accordance with the design specifications of the claimant or another product seller shall not be deemed a manufacturer for the purposes of RCW 7.72.030(1)(a)." RCW 7.72.010(2). However, a seller that labels a product with its own name, trade name or trademark, or by advertising itself as the maker of a product, will be held to be a manufacturer.

In determining whether an entity "holds itself out as a manufacturer" under the WPLA, courts consider the following five factors: whether the entity labels or affixes to the product its own name, trade name, or trademark; whether the entity identifies itself on advertisements or promotional literature as the maker of the product; whether the entity participates in the manufacture, marketing and distribution of the product; whether the entity derives economic benefit from placing the product in the stream of commerce; and whether the entity is in a position to eliminate the unsafe character of a product. *Cadwell Industries, Inc. v. Chenbro America, Inc.*, 119 F. Supp.2d 1110 (E.D. Wash. 2000).

The term "product seller" does not include:

i) A seller of real property, unless that person is engaged in the mass production and sale of standardized dwellings;

ii) A provider of professional services who utilizes or sells products within the legally authorized scope of the professional practice of the provider;

iii) A commercial seller of *used* products who resells a product after use by a consumer or other product user; provided, that when it is resold, the used product is in essentially the same condition as when it was acquired for resale;

iv) A finance lessor who is not otherwise a product seller. A "finance lessor" is one who acts in a financial capacity, who is not a manufacturer, wholesaler, distributor, or retailer, and who leases a product without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance and operation of the product are controlled by a person other than the lessor; and

v) A licensed pharmacist who dispenses a prescription product manufactured by a commercial manufacturer pursuant to a prescription issued by a licensed prescribing practitioner if the claim against the pharmacist is based upon strict liability in tort or the implied warranty provisions under the Uniform Commercial Code, Title 62A RCW, and if the pharmacist complies with recordkeeping requirements pursuant to chapters 18.64, 69.41, and 69.50 RCW, and related administrative rules as provided in RCW 7.72.040. Nothing in this subsection affects a pharmacist's liability under RCW 7.72.040(1).

Whether a defendant is a product seller or service provider is a question of law. *Anderson Hay & Grain Co., Inc. v. United Dominion Inds., Inc.*, 119 Wn. App. 249 (2003). Courts have distinguished between a product seller and a service provider by examining the contract to determine if its primary purpose was to provide a service or a product. Contractors who provide architectural, engineering or inspection services are typically not "product sellers" within the meaning of the WPLA. Id.

2. Liability of Manufacturers (RCW 7.72.030)

Liability against a manufacturer may arise from the product's design, product literature/inadequate warnings, express or implied warranties, or the product's construction. Design and warnings claims are the most common types litigated. Interestingly, the actual text of the WPLA at first glance appears to be saying that it's negligence based. "A product manufacturer is subject to liability to a claimant if the claimant's harm was proximately caused by the negligence of the manufacturer in that the product was not reasonably safe as designed or not reasonably safe because adequate warnings or instructions were not provided." RCW 7.72.030(1). Sounds like negligence, but it's not.

Continued on Page 4

WDTL STAFF

Member Services
David Penrose
4141 Agate Road
Bellingham WA 98226-8745
Phone: (206) 529-4128
Fax: (206) 202-3776
Email: service@wdtl.org

Accounting
Jackie Mintz
PO Box 27644
Seattle WA 98125-2644
Phone: (206) 522-6496
Email: accounting@wdtl.org

Executive Director
Kristin Lewis
800 Fifth Ave., Suite 4141
Seattle WA 98104
Phone: (206) 749-0319
Fax: (206) 260-2798
Email: kristin@wdtl.org

Product Liability *From Page 3*

a) Liability Based on Design

i) Strict Liability. Despite the WPLA's use of the phrase, "negligence of the manufacturer," the Washington Supreme Court has held more than once that the statutory test for inadequate design is based upon a strict liability standard, not negligence. The focus is on the reasonable safety of the product and the consumer's expectations, not the manufacturer's conduct, and the plaintiff is not required to show foreseeability. *Soproni v. Polygon Apartment Partners*, 137 Wn.2d 319 (1999); *Ayers v. Johnson & Johnson Baby Products Co.*, 117 Wn.2d 747, 761 (1991).

ii) Proving a Design Claim. To establish liability for an alleged defect in design, a plaintiff must prove that (1) a manufacturer's product was not reasonably safe as designed; and (2) it caused harm to plaintiff. *Thongchoom v. Graco Children's Prod.*, 117 Wn. App. 299, 304 (2003), rev. denied, 151 Wn.2d 1002 (2004). There are two alternative tests to prove the first element: (1) the "risk-utility" test or (2) the "consumer expectations" test. (These tests also apply to a product claim based on inadequate warnings.)

Under the risk-utility test, a plaintiff will establish liability by proving that, at the time of manufacture, the likelihood that the product would cause plaintiff's harm or similar harms, and the seriousness of those harms, outweighed the manufacturer's burden to design a product that would have prevented those harms and any adverse effect a practical, feasible alternative design would have on the product's usefulness. *Falk v. Keene Corp.*, 113 Wn.2d 645 (1989); RCW 7.72.030(1)(a).

Under the "consumer expectations" test, a plaintiff alternatively may establish manufacturer liability by showing that the product was unsafe to an extent beyond that which would be contemplated by an ordinary consumer. *Falk v. Keene Corp.*, 113 Wn.2d 645 (1989); RCW 7.72.030(3). Factors influencing this determination include the intrinsic nature of the product, its relative cost, the severity of the potential harm from the claimed defect, and the cost and feasibility of minimizing the risk. Higgins v. Intex Recreation Corp., 123 Wn. App. 821 (2004); Crittenden v. Fibreboard Corp., 58 Wn. App. 649, 658 (1990).

Continued on Next Page

Product Liability *From Page 4*

b) Liability Based on Failure to Warn/Inadequate Warnings

i) In a product liability suit alleging inadequate warnings, the plaintiff must show that his or her injury was proximately caused by a product that was "not reasonably safe because adequate warnings or instructions were not provided." RCW 7.72.030(1). The statute divides cases into those addressing the product's warnings at the time of manufacture, and those *after* manufacture.

ii) Warnings at time of manufacture. Again, a plaintiff alleging inadequate warnings may rely on either of two tests. A product is not reasonably safe at the time of its manufacture if the likelihood that the product would cause the claimant's harm or similar harms, and the seriousness of those harms, rendered the warnings and instructions given inadequate; and the manufacturer could have provided adequate warnings and instructions. RCW 7.72.030(1)(b). Alternatively, a product is not reasonably safe if the product was "unsafe to an extent beyond that which would be contemplated by the ordinary consumer." RCW 7.72.030(3).

iii) However, *post-manufacture* warnings are measured under a negligence standard. A product is not reasonably safe because adequate warnings or instructions were not provided *after* its manufacture where the "manufacturer learned or where a reasonably prudent manufacturer should have learned about a danger connected with the product after it was manufactured." RCW 7.72.030(c). "In such a case, the manufacturer is under a duty to act... in the manner that a reasonably prudent manufacturer would act in the same or similar circumstances. This duty is satisfied if the manufacturer exercises reasonable care to inform product users." Ayers, 117 Wn.2d at 765; RCW 7.72.030(1)(c).

c) Liability Based on a Defect In Construction

i) Strict liability. A manufacturer is strictly liable if the product was not reasonably safe in construction and the defect in construction proximately caused the harm. RCW 7.72.030(2).

ii) A product is not reasonably safe in its construction if, when it left the manufacturer's control, the product:

(A) Deviated in some material way from the manufacturer's design specifications or performance standards; or

(B) Deviated in some material way from otherwise identical units of the same product line.

d) Liability Based on Warranty

i) Strict liability.

A manufacturer is strictly liable if the product was not reasonably safe because it did not conform to express or implied warranties and the breach of warranty proximately caused the harm. RCW 7.72.030(2).

ii) Privity.

Product cases often involve injury to individuals who are not in privity with the product manufacturer. Manufacturers sell through retailers or suppliers who ultimately sell a product to an end user. Lack of privity—that is, the absence of a direct relationship between the plaintiff and the product manufacturer—is a defense to certain breach of warranty product claims. *Thongchoom v. Graco Children's Products, Inc.*, 117 Wn. App. 299 (2003).

Continued on Page 6

Product Liability *From Page 5*

Claimants alleging breach of an express warranty are treated differently. Privity requirements are relaxed "when a manufacturer makes express representations, in advertising or otherwise, to a plaintiff." *Baughn v. Honda Motor Co.*, 107 Wn.2d 127 (1986). See also *Thongchoom*, 117 Wn. App. 299.

3. Liability of Product Sellers – Negligence, Breaching a Warranty, or Intentionally Misrepresenting Something About the Product (RCW 7.72.040)

Except as provided below, a product seller, who is not also a manufacturer, is liable only if the claimant's harm was proximately caused by:

a) Negligence of the product seller;

b) Breach of an express warranty made by the product seller; or

c) Intentional misrepresentation of facts or intentional concealment of information about the product by the product seller.

4. Circumstances Under Which Sellers Can Become Strictly Liable Like a Manufacturer

A product seller, who is not also a manufacturer, shall nevertheless have the liability of a manufacturer if:

a) There is no solvent and liable manufacturer subject to service of process under the laws of either the claimant's domicile or Washington state;

b) The court determines it is highly probable the claimant would be unable to enforce a judgment against any manufacturer;

c) The seller is a controlled subsidiary of the manufacturer, or the manufacturer is a controlled subsidiary of the seller;

d) The seller provided the plans or specifications for the manufacture or preparation of the product, and such plans or specifications were a proximate cause of the defect in the product; or

e) The product was marketed under a trade or brand name of the seller.

This section does not apply to a pharmacist who dispenses a prescription product in the form manufactured by a commercial manufacturer pursuant to a prescription issued by a licensed practitioner if the pharmacist complies with recordkeeping requirements and related administrative rules.

Continued on Page 8

Ten Points to Ponder on Appeal

By the Hon. William W. Baker (Ret.)

In my many years on the appellate bench, I often thought, "How is it that so many bright lawyers get the simplest of things wrong." Not necessarily in terms of legal arguments or even distinctions between facts and flaws in their cases; but in terms of process and preparation. And the irony is that appellate preparation is actually easier than trial preparation, if done properly. Here are ten points to consider for your next appeal.

1. Overall View: Remember to change your message to fit your audience. You're now in front of a highly skilled appellate bench, not a jury or trial judge. Modify your message accordingly, but don't gloss over basics and fundamentals. And do not omit adverse facts or law. It is much less damaging coming from you than from your opponent.

2. Briefs should be selective, succinct, precise, prioritized in descending order of importance (first things first), but potentially dispositive procedural issues should always lead off. This is your opportunity to paint a picture for the court, but remember that raising too many or irrelevant issues diminishes all your arguments. In order to challenge Findings & Conclusions, you must set them out clearly in your brief (or appendix therto), and you must challenge similar or overlapping findings as well. Also, don't forget R.A.P requires a separate discussion with authority if you want to claim attorney fees.

3. In a responsive brief, restate facts only if your opponent has omitted or mischaracterized significant facts. If the opening brief does not accurately or completely reflect the facts of the case, take the opportunity to do so and present your view of the case. Feel free to re-characterize points you disagree with and pounce on omissions of record, fact, or law. Also, consider the order of points laid out by the opening; is it advantageous to reprioritize those to more accurately reflect your arguments?

4. Consider whether or not you really need to file a reply brief. If the respondent has raised different facts, issues, or law; certainly. But if your opening brief has covered the facts and law relevant to the issue and there is no need to respond to anything new, then don't.

5. Accuracy is essential. An incorrect citation to the record, or a misstatement of relevant authority are critical failures; like a cancer, they seriously diminish the rest of your arguments. The record will be checked and legal citations will be reviewed, so you do not want play games here.

6. Avoid the pejorative and ad hominem attacks. Your argument may be forceful without being nasty and pejorative attacks only detract from your message.

7. Have a final review of your brief by someone unaffiliated with the case (partner/paralegal) and have them tell you what it says to them. The appellate judges who read it will be similarly new to the case. A common mistake is to assume that your audience is as familiar with the case as you are. NOT SO. Bottom line is it's got to be easily and quickly understood by the unfamiliar reader.

8. Pay attention to the cases argued before yours. They will probably involve similar issues.

9. Always answer the judges' questions, even if you must admit that you have no answer.

10. Use rebuttal argument only to rebut - succinctly - not to reargue your case.

Judge Baker is available to further discuss appellate preparation and practice, as well as any and all aspects of ADR practice.

Hon. William W. Baker (Ret.) is a full-time mediator and arbitrator with JAMS. He served more than 18 years on the Washington State Court of Appeals, Division 1. During that time, he authored more than 1,500 appellate opinions and served as Chief Judge and Presiding Chief Judge. He may be reached at wbaker@jamsadr.com or 800-626-5267.

Product Liability *From Page 6*

This is a basic roadmap for the product liability landscape in Washington. Sellers and manufacturers are generally treated differently. For sound public policy reasons, manufacturers have to pay closer attention to the roadmap than sellers, because deviations will take them in the wrong direction (toward liability) more readily and more often. Sellers just have to make sure they're not negligent, not acting like a manufacturer, not breaching a warranty, and not acting badly with respect to the products they sell. And if there's a product-related injury and the seller gets sued along with the upstream manufacturer, sellers have to hope the long arm of the law (the long arm statute) reaches far enough upstream to get the manufacturer of the defective product, and that the manufacturer is solvent.

1 Claims for breach of warranty are considered a fourth type of product defect claim, and they are addressed very briefly in the WPLA at RCW 7.72.030(2). Warranty claims are governed by a simpler form of strict liability standard, i.e. there is no balancing of harms and risks against the utility and alternative designs of the product. Express warranties are usually offered by the manufacturer, not the seller. Implied warranties of merchantability and fitness fall under the rubric of the Uniform Commercial Code, Title 62A, and are beyond the scope of this article.

The JAMS Institute – Learning from One Another

By Jay Folberg •

When the editors of Defense News asked if I would write a short piece about the JAMS Institute for Washington lawyers, I recalled my experience in 1985 of teaching the first course in alternative dispute resolution at the University of Washington School of Law. Mediation was then confused with meditation and one student came to my office to ask if he should wear his gym shorts and bring his meditation mat. Only a few isolated attorneys in Seattle offered mediation services and I invited them to the law school to talk with law students in my ADR class and learn from one another. It has been fascinating to watch mediation grow in acceptance and see Washington lawyers provide leadership in embracing mediation as part of the litigation process.

After retiring as Dean of the University of San Francisco School of Law, I agreed to organize and head the JAMS Institute to help JAMS nationally, with its more than twenty Resolution Centers, walk the talk as "The Resolution Experts." JAMS panelists, as full time neutrals, now have a wealth of experience as mediators and arbitrators of major litigated disputes. The JAMS Institute is the internal education component that brings together JAMS panelists to learn from one another and to receive input and instruction from lawyer clients. JAMS has created a unique learning culture that benefits from its collective ADR experience and reflection. All JAMS panelists are expected to participate in Institute educational programs as instructional leaders or active attendees.

JAMS Institute programs incorporate a variety of formats and methods, including mentoring, shadowing, role-plays, group discussions, round-table presentations, advanced trainings, and video/DVD programs. Our Institute programs are constantly evolving and have included the following:

New Panelist Programs

Incoming JAMS panelists participate in training programs intended to provide them with a solid foundation regarding the issues, skills, and procedures required for successful ADR practice within JAMS. In addition to a multi-day mediation skills training, there are also arbitration programs to refine the conduct of arbitration proceedings and decision writing.

Most incoming panelists are paired with an experienced JAMS panelist who serves as a mentor to the new panelist. The mentor's role is to provide advice and counsel on a continuing basis to incoming panelists regarding issues relevant to ADR practice within JAMS. Newer panelists are also provided with opportunities to "shadow" more experienced JAMS neutrals in both their own and other JAMS offices, to observe them conducting mediation sessions and arbitration hearings, and to discuss the process.

Regional/Local Trainings

CADRE Programs, defined as a "nucleus of trained personnel around which a larger organization can be built," are structured as a series of small round-table discussions covering particular practice areas and subjects of interest, typically with a brief opening presentation followed by a general discussion. These programs reinforce the skills of JAMS neutrals by examining critical issues and providing panelists with information designed to complement and broaden their ADR experience and practice and promote collegiality. Again, the core concept is that we are the Resolution Experts and can learn from one another by sharing our experience.

Region-wide half-day and full-day training programs are structured and scheduled on the basis of panelist interest and regional needs. These programs provide a forum for valuable cross-fertilization of ideas, strategies, and viewpoints.

Continued on Page 10

Outside experts, and those within JAMS also present educational programs on specialized topics of interest and in particular practice areas, such as insurance, IP, employment, healthcare, and construction, among others. New and developing areas of law, as well as emerging applications of ADR services, are featured.

International ADR

As JAMS begins the transformation into an increasingly international organization, this program explores various aspects of international ADR practice, including JAMS' role in the global spread and acceptance of alternative dispute resolution. These programs help prepare JAMS panelists for international practice opportunities. JAMS, through its non-profit JAMS Foundation, sponsors International Fellows from other countries who are hosted at select JAMS Resolution Centers to learn what we do and educate us about international ADR needs and developments.

JAMS Media

The JAMS Institute has produced and procured an ever-expanding library of instructional videos and DVDs covering basic skills, advanced techniques, new applications, and topics of special interest regarding ADR theory and practice. The Institute has also recorded many of our programs, making them available to JAMS Panelists in a number of state-of-the-art digital formats. Video and DVDs may also be available for use of panelists in making outside presentations and for distribution by the JAMS Foundation for educational purposes.

JAMS Educational Programs

JAMS has traditionally provided CLE training in mediation, client representation and arbitration advocacy for lawyers. JAMS panelists regularly present training modules for bar associations, law firms, and invitational programs. You may contact your local JAMS Resolution Center to find out more about these educational programs.

JAMS is proud of its reputation as the "Resolution Experts" and has created the innovative JAMS Institute to assure and share our ADR expertise.

*Jay Folberg is Professor Emeritus and former Dean at the University of San Francisco School of Law. In addition to being a JAMS panelist, he is the Executive Director of the JAMS Institute, the training and continuing education division of JAMS, and serves as the Executive Director of the JAMS Foundation.

We've Moved!

Our new contact information:
800 Fifth Ave., Suite 4141
Seattle WA 98104
Phone: (206) 749-0319
Fax: (206) 260-2798

We would like to thank Scheer & Zehnder for their hospitality as well as a Thanks to Keating Bucklin & McCormack for the welcome!

President's Column: Fall 2008

By Ted Buck, WDTL President, Stafford, Frey, Cooper

As the Washington Defense Trial Lawyer's Association begins another year as the conscience of the State Bar, I thought it appropriate to remind our members of the increasingly varied array of opportunities the organization offers and to provide a road map for where the organization is headed over the next year.

The core of the WDTL remains its sections and committees, offering each member an opportunity to learn from and collaborate with some of the state's finest lawyers in particularized areas of substantive law. Our committees and sections meet to exchange ideas regarding discovery and motion practice, discuss changes in substantive and procedural law, to vet new theories, defenses and experts, and to work on ways to keep new and creative-but unreasonable -mischief from gaining a foothold in Washington's courts. The 2008-2009 fiscal year brings a revived section to our significant list of substantive law committees and sections, product liability. A special thanks goes out to Lisa Marchese of Dorsey & Whitney for organizing this section, which promises to be an evermore relevant substantive law issue for many of our members. Our legislative committee headed by Greg Clark did a phenomenal job in the last legislative session presenting the voice of reason and balance in what can otherwise be curious legislative endeavors. Our pro bono/community service committee has also taken on a renewed vigor under the leadership of Heather Carr, offering our members entertaining and fulfilling ways to give back to the community that has given us all so much. An additional new chair in one of our venerable practice area committees, Mike Bolasina, with the government liability section, promises to offer a refreshed and decidedly lively discussion in those arenas.

Whether your interest is in service to the organization and the legal community as a whole through one of our committees or personal and professional improvement through a substantive law section, the real value of WDTL lies in the opportunities for camaraderie, mentoring and friendship that spring from these groups. Certainly, WDTL's networking and information exchange structure provides a substantial boost to our members' professional lives. One need only attend the annual convention or a judge's reception, however, to see that perhaps the greatest benefit the WDTL brings is the opportunity to form lifelong friendships through the course of one's professional undertakings. In short, your investment in the WDTL will yield dividends throughout your professional career.

The 2008-2009 fiscal year has been dedicated to the promotion of diversity within our ranks. Here I speak not of diversity in its modern and more limited iteration, but of a more expansive definition of the word. WDTL finds itself heavily peopled with lawyers from the Puget Sound Area, and with relatively scant representation in the other venues of our fine state. This, of course, is not a great surprise; to paraphrase John Dillinger, that's where all the lawyers are. The interest of our organization, however, span an arena far greater than the urban hub of our state: they touch on the concerns of the tiniest hamlet and the well-being of every family in the state. The experiences and needs of Washingtonians vary greatly depending largely on their geography. In order to meet our goal of fighting for balance and justice in the civil courts, we are keenly in need of able

Continued on Page 12

President *From Page 11*

voices from all geographic reaches of this state. Our goal for the coming year is to cultivate perspective new members from throughout Washington's diverse geography.

Concomitant with that effort, it is our goal to make citizens throughout this state more aware of our organization, its purpose, its dedicated members, and its value in balancing the structure of civil law in our state. To further those efforts, WDTL is committed this year to reaching out to our less populous regions to provide CLE opportunities, assistance with presentations to business groups, or whatever other assistance might be within our power to meet these goals and to provide further opportunities for our members in lightly populated regions. A hearty thank you to Jeff Tilden, Emilia Sweeney and the Commercial Litigation Section for committing to the development of a risk management program for small business owners that might be provided to groups all over our state.

In looking forward to the coming year, I encourage you to take advantage of the many opportunities the organization offers its members, recognizing that your contribution will reap personal and professional benefits well beyond your investment.

2008 Convention Wrap Up

The lovely Harrison Hot Springs Resort in British Columbia was the location for this year's lively 2008 Annual Convention. With about 60 attendees and 12 exhibitors, and a myriad of pruney children who wouldn't get out of the various pools, this year's convention was a big hit.

Starting off the festivities was the Thursday welcome reception in the ballroom, with the children being entertained by a magician right next door. The evening reception is always a casual affair with members getting to reacquainted with old friends and meeting anyone new to the organization.

Friday opened with a dynamic program that covered deposition strategies, led by Lisa Marchese, Dorsey & Whitney, Chris Hazelman, Prolumnia Trial Technologies, and trial techniques, delivered by Jeff Frank, Foster Pepper, Deborah Callaghan, Washington Schools Risk Management Pool, Mike Patterson, Patterson Buchanan Fobest Leitch Kalzer & Waechter, and Ted Prosise of Tsongas Litigation Consulting. The golf tournament followed the morning program where we had over 25 golfers try their luck at the Sandpiper Golf Resort.

Saturday was dedicated to a panel retelling mistakes made in trial, led by Greg Clark, Foster Pepper, Kelley Sweeney, Law Offices of Kelley Sweeney & Linda Gallagher of the King County Prosecutor's Office, e-discovery by James Yand, and a discussion of ethics from Justice Debra Stephens and Tom Fitzpatrick of the Talmadge Law Group. Saturday night closed the festivities with a quick awards banquet, the giving of the golf awards and the drawing for the Wii game system. Congratulations to Stew Estes of Keating Buckling for winning President's award for 2008.

Thank you to our core sponsors and exhibitors for the 2008 convention

1st Security Bank of America
ARRCA, Inc.
DRI
Exponent
Machaon Medical Evaluations
Madsen Kneppers & Associates
MCN
Naegeli Reporting
OMAC
Owings & Associates
Prolumnia
Tscan
Tsongas Litigation Consulting

2008 - 2009

WDTL WASHINGTON DEFENSE TRIAL LAWYERS
Fighting for Justice and Balance in Civil Courts

OFFICERS

PRESIDENT
Ted Buck
Stafford Frey Cooper
601 Union St, Suite 3100
Seattle WA 98101
206.623.9900 voice
206.624.6885 fax
tbuck@staffordfrey.com

PRESIDENT-ELECT
Jillian Barron
Sebris Busto James
14205 SE 36th Street, Suite 325
Bellevue WA 98006
425.454.4233 voice
425.453.9005 fax
jbarron@sebrisbusto.com

SECRETARY
Matthew Wojcik
Mullin Law Group PLLC
315 Fifth Avenue South, Suite 1000
Seattle, WA 98104
206.957.7007 voice
206.957.7008 fax
mwojcik@mullinlawgroup.com

TREASURER
Emilia Sweeney
Carney Badley Spellman P.S.
701 5th Avenue, Suite 3600
Seattle, WA 98104
206.607.4187 voice
206.622.8983 fax
sweeney@carneylaw.com

TRUSTEES

Board Advisor

Committee Coordinator
Aaron Rocke
Rocke Law Group PLLC
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
206.407.2548 voice
206.357.8401 fax
aaron@rockelaw.com

Community Service Chair

Court Rules Chair
Michael Runyan
Lane Powell PC
1420 Fifth Avenue, Suite 4100
Seattle WA 98101-2338
206.223.7062 voice
206.223.7107 fax
runyanm@lanepowell.com

DRI State Representative
Jeffrey G. Frank
Foster Pepper PLLC
1111 Third Ave., Ste. 3400
Seattle, WA 98101-3299
206.447-2915 voice
206.749-2029 fax
fraje@foster.com

Judicial Liaison Chair
Dan L. Johnson
Law Offices of Shahin Karim
520 Pike Street, Suite 1300
Seattle, WA 98101
206.405.1911 voice
206.405.1916 fax
dan.johnson@usaa.com

Legislative Chair
Greg A.V. Clark
Foster Pepper PLLC
1111 Third Ave., Ste. 3400
Seattle, WA† 98101-3299
206.447-2915 voice
206.749-2029 fax
gclarg@foster.com

Membership Chair
Steven Stocker
Stocker, Smith, Luciani & Staub
312 W. Sprague
Spokane WA 99201
509.327.2500 voice
509.327.3504 fax
sstocker@sslslawfirm.com

Past President
Rick Roberts
Law Offices of Sharon J. Bitcon
200 West Mercer St, Ste 111
Seattle WA 98119
206.286.1890 x15 voice
206.286.1941 fax
richard.roberts2@thehartford.com

Practice Development
Erin Hammond
Fain Sheldon Anderson & Vanderhoef, PLLC
701 Fifth Avenue, Suite 4650
Seattle WA 98104
206.749.0094 voice
206.749.0194 fax
erin@fsav.com

Programs Chair
Jennifer Campbell
Schwabe, Williamson & Wyatt
1420 Fifth Avenue, Suite 3020
Seattle, WA 98101
206.622.1711 voice
206.292.0460 fax
jcampbell@schwabe.com

Publications Chair
Grant Lingg
Forsberg & Umlauf, P.S.
900 4th Ave, Suite 1700
Seattle WA 98164-1039
206.689.8500 voice
206.689.8501 fax
glingg@forsberg-umlauf.com

Public Relations Chair
Melissa Habeck
Forsberg & Umlauf, P.S.
900 4th Ave, Suite 1700
Seattle WA 98164-1039
206.689.8500 voice
206.689.8501 fax
mhabeck@forsberg-umlauf.com

Trustee at Large
Ryan Beaudoin
Witherspoon, Kelley, Davenport & Toole, P.S.
1100 U.S. Bank Building
422 W Riverside Ave
Spokane WA 99201-0302
509.624.5265 voice
509.458.2728 fax
rmb@wkdtlaw.com

Trustee at Large
Edward Bruya
Keefe, Bowman & Bruya, P.S.
Ste 1102, W 601 Main Ave
Spokane WA 99201
509.624.8988 voice
509.623.1380 fax
ebruya@kkbowman.com

Trustee at Large
Linda Gallagher
King County Prosecutor's Office
900 Fourth Avenue, Suite 900
Seattle, WA 98104
206.296.8820 voice
206.296.8819 fax
linda.gallagher@kingcounty.gov

Trustee at Large
Dirk Holt
Scheer & Zehnder L.L.P.
701 Pike Street, Suite 2200
Seattle, WA 98101
206.262.1200 voice
206.223.4065 fax
dholt@scheerlaw.com

Trustee at Large
Jeffrey M. Kreutz
Meyer, Fluegge & Tenney, PS
230 S 2nd St
P.O. Box 22680
Yakima WA 98908
509.575.8500 voice
509.575.4676 fax
kreutz@mftlaw.com

Trustee at Large
James B. Meade
Forsberg & Umlauf
950 Pacific Avenue, Ste. 400
Tacoma WA 98402
253.572.4200 voice
jmeade@forsberg-umlauf.com

Trustee at Large
Michael Nicefaro
Office of the Attorney General
Suite 2200
900 Fourth Avenue
Seattle WA 98164
206.464.7352 voice
206.587.4229 fax
miken@atg.wa.gov

COMMITTEE CHAIRS

Amicus
Stewart Estes
Keating, Bucklin, McCormack
800 Fifth Avenue, Suite 4141
Seattle WA 98101-2509
206.623.8861 voice
206.233.9423 fax
sestes@kbmlawyers.com

Bar Liaison
James Macpherson
Kopta & Macpherson
365 Ericksen Avenue, Suite 325
Bainbridge Island WA 98110
206.780.4050 voice
206.780.3868 fax
jemacpherson@cs.com

Board Development
Jillian Barron
Sebris Busto James
14205 SE 36th St, Suite 325
Bellevue WA 98006
425.454.4233 voice
425.453.9005 fax
jbarron@sebrisbusto.com

Committee Coordinator
Aaron Rocke
Carney Badley Spellman
701 Fifth Avenue, Suite 3600
Seattle WA 98104-7010
206.622.8020 voice
206.962.5497 fax
Rocke@carneylaw.com

Court Rules
Michael Runyan
Lane Powell PC
1420 Fifth Avenue, Suite 4100
Seattle WA 98101-2338
206.223.7062 voice
206.223.7107 fax
runyanm@lanepowell.com

Judicial Liaison
Dan Johnson
Law Offices of Shahin Karim
520 Pike Street, Suite 1300
Seattle WA 98101
206.405.1900 voice
dan.johnson@usaa.com

Legislative Committee
Greg A.V. Clark
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle WA 98101
206.447.3860 voice
206.749.2030 fax
clarg@foster.com

Pro Bono/Community Service
Heather Carr
Stafford Frey Cooper PC
3100 Two Union Square
3100 Two Union Square
Seattle WA 98101
206.623.9900 voice
206.624.6885 04 fax
hcarr@staffordfrey.com

Membership
Steven Stocker
Stocker, Smith, Luciani & Staub
312 W. Sprague
Spokane WA 99201
509.327.2500 voice
509.327.3504 fax
sstocker@sslslawfirm.com

Past Presidents
Andrew Cooley
Keating, Bucklin & McCormick
800 Fifth Avenue, Suite 4141
Seattle WA 98104
206.623.8861 voice
206.233.9423 fax
acooley@kbmlawyers.com

Practice Development
Erin Hammond
Fain Sheldon Anderson & VanDerhoef, PLLC
701 Fifth Avenue, Suite 4650
Seattle WA 98104
206.749.0094 voice
206.749.0194 fax
erin@fsav.com

Programs
Jennifer Campbell
Schwabe, Williamson and Wyatt
1420 Fifth Avenue, Suite 3010
Seattle WA 98101-2338
206.689.3052 voice
206.292.0460 fax
jcampbell@schwabe.com

Publications
A. Grant Lingg
Forsberg & Umlauf, P.S.
900 4th Ave, Suite 1700
Seattle WA 98164-1039
206.689.8500 voice
206.689.8501 fax
glingg@forsberg-umlauf.com

Public Relations
Melissa Habeck
Forsberg & Umlauf, P.S.
900 4th Ave, Suite 1700
Seattle WA 98104
206.346.3957 voice
206.689.8501 fax
mhabeck@forsberg-umlauf.com

Strategic Planning
Inactive at this time

Technology
John Schedler
Lee Smart P.S. Inc.
1800 One Convention Place
701 Pike Street
Seattle WA 98101-3929
206.626.0405 voice
206.624.5944 fax
jws@leesmart.com

SECTION CHAIRS

Asbestos/Toxic Torts
Melissa Habeck
Forsberg & Umlauf
900 4th Ave, Suite 1700
Seattle, WA 98104
206.346.3957 voice
206.689.8501 fax
mhabeck@forsberg-umlauf.com

Commercial Litigation
Jeff Tilden
Gordon Murray Tilden LLP
1001 4th Ave, Suite 4000
Seattle WA 98154-1007
206.467.6477 voice
206.467.6292 fax
jtilden@gmtlaw.com

Construction
Lori K. McKown
Preg, O'Donnell & Gillett, PLLC
1800 9th Ave, Suite 1500
Seattle WA 98101
206.287.1775 voice
206.287.9113 fax
lmckown@pregodonnell.com

Employment/Corporate Counsel
Jennifer A. Parda
Sebris Busto James
Suite 325
14205 SE 36th Street
Bellevue, WA 98006-1505
425.454.4233 voice
425.453.9005 fax
jparda@sebrisbusto.com

Government Liability
Michael Bolasina
Stafford Frey Cooper PC
3100 Two Union Square
601 Union Street
Seattle WA 98101
206.667.8228 voice
206.624.6885 fax
mbolasina@staffordfrey.com

In-House Counsel
Maggie Sweeney
Law Offices of William D. Garcia
1601 Fifth Avenue, Suite 1210
Seattle WA 98101-3602
206.633.1310 voice
206.925.0799 fax
magswe@safeco.com

Insurance
Irene Hecht
Keller Rohrback LLP
1201 Third Avenue, Suite 3200
Seattle WA 98101-3052
206.623.1900 voice
206.623.3384 fax
ihecht@kellerrohrback.com

Maritime
Katie Mattison
Lane Powell
1420 Fifth Avenue, Suite 4100
Seattle WA 98101
206.223.7000 voice
206.223.7107 fax
matisonk@lanepowell.com

Product Liability
Lisa Marchese
Dorsey & Whitney LLP
U.S. Bank Centre
1420 Fifth Avenue, Suite 3400
Seattle, WA 98101-4010
206.903.2379 voice
206.903.8820 fax
marchese.lisa@dorsey.com

Professional Liability
Tim Ashcraft
Williams Kastner & Gibbs
1301 A St #900
Tacoma WA 98402
253.593.5620 voice
253.593.5625 fax
tashcraft@wkg.com

Professional Liability
Gerrit Ayers
Burgess Fitzer, P.S.
1145 Broadway, Suite 400
Tacoma WA 98402
253.572.5324 voice
253.627.8928 fax
gerrita@burgessfitzer.com

Workers' Compensation
Mary E. Levenson
Eims & Flynn, P.S.
216 First Avenue South, Suite 310
Seattle, WA 98104
206.521.4944 voice
206.521.4940 Fax
mlevenson@eims-flynn.com

REGIONAL REPRESENTATIVES

Central Washington
Jeffrey M. Kreutz
Meyer, Fluegge & Tenney, PS
230 S 2nd St
P.O. Box 22680
Yakima WA 98908
509.575.8500 voice
509.575.4676 fax
kreutz@mftlaw.com

South Sound
James B. Meade
Forsberg & Umlauf
950 Pacific Avenue, Ste. 400
Tacoma WA 98402
253.572.4200 voice
JMeade@forsberg-umlauf.com

Southwest Washington
Brian Weeks
Bullivant Houser Bailey
805 Broadway St., Suite 400
Vancouver WA 98660-3310
360.737.2313 voice
360.695.8504 fax
brian.weeks@bullivant.com

Eastern Washington
Edward Bruya
Keefe, Bowman & Bruya, P.S.
Ste 1102, W 601 Main Ave
Spokane WA 99201
509.624.8988 voice
509.623.1380 fax
ebruya@kkbowman.com

North Sound
Open

ADMINISTRATION

Executive Director
Kristin Lewis
800 Fifth Avenue, Suite 4141
Seattle, WA 98104
206.749.0319
206.260.2798
kristin@wdtl.org

WASHINGTON DEFENSE TRIAL LAWYERS

Application for Membership

1. The undersigned hereby makes application for membership with the Washington Defense Trial Lawyers, representing that a substantial portion of my practice is devoted to representing defendants, companies, or entities in civil litigation:

Name _____

Firm Name _____

Office Address _____

City _____ State _____ Zip _____

Home Address _____

Phone (_____) _____ WSBA Bar # _____

FAX (_____) _____

E-mail _____

2. Year of Admission to Bar _____ Legislative District _____

3. State degrees held, both academic and law, year of graduation and school:

_____

4. If you were referred to WDTL by a fellow attorney, please list name here:

_____

5. 2008-2009 Membership Dues

Attorneys	
Admitted to the Bar more than 5 years	$260.00
Admitted to the Bar less than 5 years	$210.00
Other	
Government Attorney	$135.00
Retired Member	$110.00
Associate Member (Non-Attorney)	$85.00
Law Student	$10.00

6.a. YES! I would like to serve on the following WDTL Committees.

- ☐ Amicus
- ☐ Community Service/Pro Bono
- ☐ Court Rules
- ☐ Judicial Liason
- ☐ Legislative
- ☐ Membership
- ☐ Practice Development
- ☐ Programs
- ☐ Publications
- ☐ PR/Speakers' Bureau
- ☐ Technology

6.b. YES! I would like to join the following sections

- ☐ Asbestos/Toxic Torts
- ☐ Construction
- ☐ Commercial Litigation
- ☐ Employment
- ☐ Government Liability
- ☐ In-House Counsel
- ☐ Insurance
- ☐ Maritime
- ☐ Product Liability
- ☐ Professional Liability
- ☐ Workers' Compensation

7. ☐ I would like to contribute $150.00, $100.00, $50.00 (minimum $20.00) to fund WDTL's legislative advocacy and outreach program.

I understand that pursuant to Public Law 103-66, this portion of my annual WDTL dues is not deductible from federal income taxes as a business expense

8. Dues $_____ + Legislative Contribution $_____ = TOTAL:$ _____

Please make check payable to: WASHINGTON DEFENSE TRIAL LAWYERS and mail to:

MEMBER SERVICES, 4141 AGATE ROAD, BELLINGHAM, WA 98226

Or fax with credit card information to (206) 202-3776

Payment: ☐MC ☐VC ☐AmEx Expires:____/____ # _____

Credit Card Authorization Signature _____

Questions? Contact Kristin Lewis,WDTL Executive Director at (206) 749-0319 or kristin@wdtl.org

9. Dated this _____ day of _____, 20 _____

10. Signature of Applicant: _____

Proposed WDTL Events Calendar for 2008-2009 (register online at www.wdtl.org)

November

7 CLE - Hands on Motions Practice

14 CLE - Joint Idaho/Washington Seminar – Coeur d'Alene, Idaho

December

4 CLE - Ethics followed by WDTL Holiday Party – Seattle Public Library

5 CLE - Cranes, Chains and Automobiles: The Latest Trends in Product Liability – Hotel Monaco, Seattle

12 CLE - Annual Tort Law Update – Convention Center – Seattle

January

20 South Sound Judicial Dinner – Courtyard Marriot, Tacoma

21 CLE - Asbestos Update, Convention Center – Seattle

February

5 CLE - Defense Paralegals Program

26 CLE - Annual Update on Construction Law - Convention Center – Seattle

March

20 CLE - Annual Update on Construction Law – Hotel Monaco, Portland

CLE - Yakima Seminar

April

8 CLE - Insurance Law Update – Convention Center, Seattle

CLE - Judicial Reception – Spokane

May

CLE - Law Practice Management – Puget Sound

June

CLE - Defending the Auto Case – Seattle

July

16-19 Annual Convention – Sun Mountain, Washington

WDTL
WASHINGTON DEFENSE TRIAL LAWYERS
Fighting for Justice and Balance in Civil Courts