FORUM 8

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President's Message

By Rob Birrenkott

Thank you

This is my final chance to write a column as EJCBA President. It was my goal this year to provide value to our members and give back to an organization that has meant a great deal to me personally. To accomplish this, the EJCBA focused on providing our members with opportunities to "Gather," "Grow," and "Give."

It was great to see so many members throughout the year enjoying time with old friends while making new ones. Monthly luncheons (which featured outstanding local, state, and national leaders), Cedar Key (where we held our Roast and Toast on the Coast honoring Carl Schwait), a family friendly social at Cymplify, and our Second Annual Spring Fling at the Thomas Center, are a few examples of the opportunities for our members to "Gather" and build relationships. These were fun events and served as great reminders about how fortunate we are to have such a collegial legal community.

In terms of opportunities to "Grow," the EJCBA provided our members with nearly 50 hours of CLE programming at no (or very modest) cost. We continued to offer outstanding content through the annual EJCBA Professionalism Seminar, expanded opportunities to participate in two trial technique series hosted by Judge Hulslander, and partnered with UF Law to offer CLE's on the Florida Constitutional Revision Commission and the Annual Electronic Discovery Conference (which members could attend for free and by itself provided a savings that exceeded annual membership dues). We worked hard to ensure you received a return on your investment in the EJCBA and I hope you agree we met this goal.

Speaking of return on investment, this brings me to opportunities to "Give." We rallied around the principle that when the EJCBA makes it possible for busy professionals to efficiently give back to their communities, this is a member benefit because when we serve others, we are the beneficiaries. The generosity of our members was on abundant display this year: we partnered with the medical community to raise money that resulted in a state of the art kitchen for the residents of GRACE marketplace, a local homeless center; provided hundreds of toys, which were hand delivered to each recipient by Santa, to children in the Head Start program; provided legal services to underserved populations through the continuation and expansion of the Ask-A-Lawyer program; hosted at-risk youth for a Law and Justice Conference; continued the Law in the Library speaking series; and organized the EJCBA Charity Golf Tournament Benefiting the Guardian ad Litem Foundation which raised money for abused and neglected children. The culmination of your contributions resulted in our bar association being honored as the recipient of the Florida Chief Justice's 2016 Voluntary Bar Association Pro Bono Service Award. We are the small bar with huge hearts and you should be proud to be a part of it; I know I am.

Please consider celebrating with us at the Annual Cocktail Reception, Dinner & Meeting on Thursday, June 9 from 6:00-8:30 pm at the Florida Museum of Natural History. It will be a fantastic fun-filled evening with live music, friends, food, and drink. RSVP by June 2nd http://www.8jcba.org/event-registration/2016-annual-dinner. I hope to see you there!

In closing, thank you. Thank you to all the prior leaders of the EJCBA who handed me the baton with

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Contribute to Your Newsletter!

From The Editor

I'd like to encourage all of our members to contribute to the newsletter by sending in an article, a letter to the editor about a topic of interest or current event, an amusing short story, a profile of a favorite judge, attorney or case, a cartoon, or a blurb about the good works that we do in our communities and personal lives. Submissions are due on the 5th of the preceding month and can be made by email to dvallejos-nichols@avera.com.

About This Newsletter

This newsletter is published monthly, except in July and August, by:

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Any and all opinions expressed by the Editor, the President, other officers and members of the Eighth Judicial Circuit Bar Association, and authors of articles are their own and do not necessarily represent the views of the Association.

News, articles, announcements, advertisements and Letters to the Editor should be submitted to the Editor or Executive Director by Email. Also please email a photograph to go with any article submission. Files should be saved in any version of MS Word, WordPerfect or ASCII text.

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Deadline is the 5th of the preceding month

Alternative Dispute Resolution

By Chester B. Chance and Charles B. Carter

Password

Your younger reporter told your older reporter we were going to do an article on Password. The response was a bit dated. The elder reporter didn't know why we should write an article about a daytime television game show from the 60s-70s.

He went on and on about Allen Ludden, the host of the show, and Ludden's wife, Betty White, who frequently appeared on the show. He even knew that in 2013 TV Guide ranked Password No. 8 on its list of the 60 Greatest Game Shows ever.

The elder CBC was disappointed when it was explained we will be talking about computer access passwords. Specifically, we are writing an article which lists the most common, and thus, the most unsafe passwords. Our mission is to make your technology systems more secure.

What are the most common passwords?

According to an internet article by Cameron Coles, the most common password in 2015 was "123456."The elder CBC was proud that his password ranked No. 1. We had to explain that was not a good thing.The second most popular password is, of course, "password."Almost 5.5% of all people use either "123456" or "password" as their super-secret password.Coming in as the most common passwords after these first two are:

- 12345
- 1234
- football
- qwerty (look at your keyboard)
- 1234567890
- 1234567
- princess
- solo

The above are the 10 most popular passwords and 10.3% of all users employ the 20 most popular passwords. That means with fewer than 20 guesses anyone could log-in to roughly 1 out of 10 accounts today according to Cameron Coles. Mr. Coles suggests it is "…becoming clear that other authentication technologies are necessary to protect sensitive information." A multi-factor authentication requires a user to login with their user name and password, and then to complete the authentication the user also needs to enter a code texted to their phone. "This additional step makes it much harder for a third party to access an account with a stolen password.

"Otherwise, as you probably heard, it is suggested that a user should designate passwords with a combination of upper-case characters, lower-case characters, numbers and symbols. Of course, such passwords are difficult to remember, but, on the other hand, they are difficult to determine and thus much safer.

Nobody suggests using your name and your date of birth. And no one suggests you use the same password for every site. In fact, there is an App where you can securely (with one password) secure your passwords, account numbers, etc. Internet sites exist which will even help you guess passwords. These tricks include:

If the password has a number in it, it will usually be a 1 or a 2 and it will be at the end of the password. A lot of times it's somebody's name or initials with the last two digits of the year they were born, the year they were married, graduated from high school, etc.

If there is a capital letter in the password, it's typically at the beginning and often followed by a vowel.

Many retired judges use their initials and the year they retired. Other retired judges use their initials and the last two digits of the last year in which they caught a fish. Just sayin'.

Like passwords, people tend to choose common PIN codes. What is the most common pin code? Think about it. It's not difficult.

Of course, the most common pin number is "1234" used almost 11% of the time. What are other common pin numbers? See our chart below:

2. 1111 – 6% of the time
3. 0000 – 2% of the time
4. 1212 – 1% of the time
5. 7777 – 0.75% of the time
6. 1004 – 0.61% of the time
7. 2000 – 0.60% of the time
8. 4444 – 0.5% of the time
9. 2222 – 0.5% of the time
10. 6969 – 0.5% of the time

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Criminal Law

By William Cervone

To end the publishing year, as is a kind of custom, we'll take a walk down memory lane and re-visit the most recent legislative session. This year was actually cordial, at least compared to the great disaster that was Tallahassee 2015 and current national politics. Cordial, of course, is a euphemism for leadership having more effectively twisted arms and issued orders out of the public eye in order to better insure their desired results.

Perhaps most interesting to criminal practitioners (other than the shocking inability of the NRA to have gotten any of their pet bills like campus carry and open carry passed) was the debate over and passage of a significantly new death penalty law. The release of the United States Supreme Court's *Hurst* decision coming as it did soon after the legislature convened made this an absolute priority, of course.

Hurst, which came as quite a surprise or no shock at all depending on your perspective, is actually a limited decision. Regardless of your position on the death penalty you'd almost have to have wished for more. SCOTUS dodged, again, the over-riding question of whether our society should have a death penalty under any scheme. It dodged the almost equally important question of whether a death sentence could result from a less than unanimous decision by a jury. All it really did was make it clear that a jury must make findings that would make a defendant eligible for death, and that those had to be specific and unanimous. Those findings are separate and apart from a recommendation that they warrant death.

Once *Hurst* was released, of course, the frenzy was on. In the end, the new statute makes significant changes. First, prosecutors must now give formal notice of what factors they will rely on in seeking death. This was already common practice across the state. Then the jury must now return an interrogatory verdict as to those factors, and must unanimously find the existence of at least one for a defendant to be eligible for a death sentence. Next and most importantly, having unanimously found eligibility the jury must then vote to recommend death by at least a 10-2 super-majority instead of Florida's previous bare majority 7-5 requirement. Only then could a judge sentence a defendant to death. Finally, a judge may not impose death if the jury has not recommended it by that vote, which was still technically possible but to my knowledge had not been done in decades anywhere in the state. The judge may still impose life despite a jury recommendation for death.

The primary debate was over a 10-2 as opposed to unanimous jury recommendation. In the end, the legislature agreed with prosecutors, who urged that requiring unanimity at that point would allow for one or two jurors to effectively hold the process hostage against the will of a large majority, which would harken back to the 1970s when SCOTUS declared the death penalty unconstitutional because of its arbitrary and capricious application. (Yes, I know I am grossly over-simplifying so please don't call me about it.) What could be more arbitrary and capricious than allowing one or two people to effectively over-rule 10 or 11? Opponents, of course, insist that this invites inevitable reversal from the Supreme Court, which they believe will eventually say unanimity is required. To that I say who knows? On the one hand they've had decades of opportunity to do that, including in *Hurst*, and they haven't. On the other hand as the members of the Court change, starting with a replacement for Justice Scalia, so too could this, and perhaps someday they will do an about face on the entire death penalty process and simply declare "Enough!"

One other significant change that occurred was the repeal of 10-20-Life mandatory sentencing in Aggravated Assault cases, effective in July. This is symptomatic of a general legislative shift away from mandatory sentencing. Ironically, those are the same mandatory sentences that prior legislatures put into place. In future years it would be wise to anticipate additional review of current sentencing structures, especially in the area of drug mandatories. I wish I could tell you that I thought this was purely altruistic but it is not; instead, these moves seem to me to be motivated by a desire to cut prison costs and to give money to any number of private vendors who are now making a good profit off of doing what the State should be doing in providing rehabilitative services.

There have been a small boatload of additional criminal law changes this year but none that are as sweeping as these two. With regard to them all, I can only quote Justice Charles Canady, who ventured at a recent Florida Supreme Court argument that I attended that it is all "new wisdom." Indeed, I suppose it is at least one of those two words.

You will not want to miss this "*mammoth*" event!

The Eighth Judicial Circuit Bar Association
invites you and your guests to join us for our

Annual Cocktail Reception, Dinner & Meeting
at the Florida Museum of Natural History

Thursday, June 9, 2016
6:00 pm until 8:30 pm
(Cocktails from 6:00 pm until 7:00 pm)

$35 for members and non-lawyer guests
$55 for non-members

RSVP by June 2nd at
www.8jcba.org/event-registration/2016-annual-dinner/

Come celebrate!
Enjoy food and drink with colleagues and guests, recognize members of our local legal community, and induct new board members and officers

Please contact Judy Padgett at execdir@8jcba.org with questions

Gainesville musician Michael Claytor will fill the museum with fantastic music!

Summer's Approaching - It's Time to Pay Your Bar Dues!

By Marcia Green

The other day, my car told me that it was 108 degrees in the mid-afternoon sun. I had only been in the grocery store for a relatively short time and was a little shocked. It's still a few more weeks before the official start of summer. So, what does this tell me? You're probably thinking I'm going to start a conversation about global warming or ask you why you decided to live in Florida.

But no. Actually, I'm reminded that it's that time of year when attorneys renew their bar dues and ask themselves whether or not they have fulfilled their pro bono commitment for the year. While I hope my tangential mind brings a smile to your face, I also hope it provokes the question "have I changed any lives this year?"Three Rivers Legal Services is the local provider of direct civil legal assistance to the low income residents of the Eighth Judicial Circuit. As a non-profit law firm with limited staff, we greatly rely on the help of volunteer attorneys and law students. While working with a deficit budget, we relied on that help to increase our services to clients by 20% in this past year. This is amazing progress for our organization but, of course, we know we are just addressing the tip of the iceberg. Our Annual Report provides a more in-depth review of some of our accomplishments over the past year. You will find it at our website at www.trls.org "Read our 2016 Annual Report" or www.trls.org/images/TRLS%202016%20Annual%20Report.pdf. We would be happy to send you a hard copy.The point is, however, that pursuant to Florida Bar Rule 4-6.1, a member of The Florida Bar ... "should (1) render pro bono legal services to the poor and (2) participate, to the extent possible, in other pro bono service activities that directly relate to the legal needs of the poor." Although the provision of pro bono legal services is aspirational, your contributions of time and/or money enables programs such as Three Rivers to increase services, change lives and make the truly unique difference that only attorneys can make. Three Rivers Legal Services provides a number of opportunities for pro bono participation in the areas of family law, consumer rights, housing, wills, probate, guardian advocacy and more. Three Rivers offers in-person advice clinics and speaking opportunities as well as individual representation of clients in a variety of civil matters. Your support of your time, your talents and your resources helps Three Rivers save homes, assist the elderly and disabled, prevent homelessness, protect those who have been abused, and prevent the destruction of families. You may be providing help when it is needed most and may be the difference between fairness or injustice. As an attorney, you are an integral part in the delivery of legal services to our low income community.

Please consider joining your fellow bar members in donating your skills and making financial contributions to assist vulnerable residents in our community through Three Rivers Legal Services. To learn more about how your contributions and/or your time can help Three Rivers fulfill its mission, contact marcia.green@trls.org or visit www.trls.org/invest.html.

President's Message

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so much momentum, thank you to our EJCBA Board for all of your hard work to maintain it, and thank you to our future leaders who will continue to advance it. I appreciate the opportunity to serve as the EJCBA President and will always remain grateful.

ADR

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For a four digit pin, there are 10,000 possible combinations of the digits from 0000 through 9999. And yet, the PIN code "1234" is used 11% of the time. The top 20 PIN codes account for 27% of the total. The PIN code 2580 is used often. Why? Look at the keypad and you will see why. We were told other frequent PIN codes include months and dates, e.g., "1158."The Florida Bar believes cell phone and computer security is a requirement for attorneys. Meeting that requirement probably does not mean using passwords and PIN codes which are, to say the least, predictable.With that thought we will close our article, and take a moment to change our PIN code for our security systems.

Responding To Civil Investigative Demands

By Robert S. Griscti & Jake Huxtable

Federal civil investigations, including the recent increase in False Claims Act healthcare investigations, are typically initiated through Civil Investigative Demands ("CIDs"). The increase in the use of CID's was noted in a recent article by Dean Mead's White Collar Law Team, "*The Rise of Civil Investigative Demands in White Collar Investigations*" (April 2016 *Forum 8*).

CID's are judicially enforceable demands for documents, written answers to interrogatory questions, and deposition testimony. There are many considerations a company or individual should keep in mind when responding to a CID by a governmental agency. This article is intended as an overview of some of those considerations.

CID Requesting Documents or Written Interrogatories

The recipient of a CID for production of documents or written interrogatories is obligated not only to provide information to the requesting agency, but also encumbered with the associated duty to immediately preserve information. Those duties attach upon service to the CID recipient. For companies, this means litigation holds should be issued promptly and detailed instructions should be given to IT and other corporate staff to preserve information.

Multiple time-intensive issues are presented. CID's typically have abbreviated response deadlines. Those deadlines can expire in a very short period after service of a CID. A CID recipient should immediately consult with experienced counsel to develop a comprehensive response strategy and timetable. Promptly assessing the extent and time necessary for complete production is required so that counsel can then effectively communicate with the government agency to, for example, negotiate an appropriate extension for response to the CID.

If the investigative agency issues a CID that seeks clearly irrelevant information, or the material requested is not described with specificity, an objection to quash or limit the scope of a CID may be necessary because the broad production requested is unduly burdensome. A petition to quash or limit the CID must "set forth all factual and legal objections to the civil investigative demand, including all appropriate arguments, affidavits, and other supporting documentation." Thus, if the CID recipient wishes to make factual objections about the heavy burden and cost of compliance or object about the scope of information sought being overly broad, the recipient must be prepared to support these claims with testimonial and/or documentary evidence.

Sometimes counsel for the CID recipient can effectively negotiate with the agency to limit otherwise broad production requests, avoiding the need to litigate. This, again, requires a prompt assessment of the parameters of the CID, so that such negotiations are timely initiated.

The scope of a CID also may call for the production of trade secrets, confidential information, or other privileged information. The act of production of documents, for example, may itself be subject to at least a limited privilege. Counsel must help assess these privilege issues promptly. Production, or parts thereof, in response to a CID may also be protected from disclosure under standards applicable to a civil subpoena. Failure to timely raise objections to production based on privilege can constitute a waiver to those objections.

Counsel for a CID recipient also should assess the need for a confidentiality agreement with the requesting agency, to help insure that information that is produced is not disclosed to other entities, and to avoid the risk of waiver in the event that privileged or confidential material is inadvertently produced. Similar confidentiality agreements may also be required with, for example, third party IT or other vendors employed by the CID recipient to assist in responding to the CID.

CID Requesting Oral Testimony

Similar to civil case subpoenas, a CID may also demand oral testimony through a deposition. A CID deponent is entitled to the same witness fees and mileage as is paid to subpoenaed witnesses in federal District Courts. The deposition must be taken before an officer authorized to administer oaths

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and affirmations, and the testimony must be taken stenographically and transcribed. Typically, only the person testifying, his or her counsel, the investigators conducting the deposition and the stenographer taking the testimony may be present. CID statutes typically do not provide for questioning by the witness's counsel at the close of the agency investigator's questions; in this respect, CID depositions differ from depositions taken pursuant to a civil case subpoena.

Although CID's are issued in the civil investigative arena, rather than in a criminal investigation, a CID deponent may have constitutional privileges to protect before testimony is given. For example, the deponent may refuse to respond to a question on the basis of that individual deponent's Fifth Amendment privilege against self-incrimination. As a CID deposition is part of a "proceeding before . . . an agency of the United States" as contemplated in 18 U.S.C. § 6002(2), the Department of Justice may compel the testimony of the CID deponent under a grant of immunity in accordance with 18 U.S.C. § 6004.

The compulsion order granting the CID deponent immunity should contain language similar to the following: "[n]o testimony or other information compelled under this order (or any information directly or indirectly derived from such testimony or other information) may be used against you in a criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this order."

The investigative agency has no obligation to grant immunity to a CID recipient. Whether the investigative agency decides to seek any form of immunity may indicate the CID deponent's status; that is, whether the agency considers the deponent as a subject of the investigation or as a potential witness. If the CID deponent knows that he or she will invoke the Fifth Amendment right to not answer questions at deposition, it may be prudent for deponent's counsel to notify the appropriate investigative agency of that position before the deposition takes place, to allow for effective negotiation as to an appropriate immunity order before the deposition proceeding is undertaken.

In summary, given the government's extensive use of CID's in white-collar crime investigations, it is important for companies and individuals served with a CID to seek experienced legal assistance as early as possible after receipt of the CID. Identifying and assessing issues at an early stage will, in turn, give recipient's counsel the opportunity to safeguard important rights, potentially avoid the need for litigation, and aid timely and complete response to the CID.

[1] See, e.g., In re PHH Corp., 2012-MISC-PHH Corp.-0001, *6 (CFPB 2012) (stating "in order to meet its legal burden, the subject must undertake a good-faith effort to show 'the exact nature and extent of the hardship' imposed, and state specifically how compliance will harm its business").
[2] See 31 U.S.C. § 3733(b)(1).
[3] See 31 U.S.C. § 3733(j)(2)(A)(i).
[4] See 31 U.S.C. § 3733(h)(8).
5See 31 U.S.C. § 3733(h)(1).
[6] See 31 U.S.C. § 3733(h)(2).
[7] See Fed. R. Civ. 30.
[8] See 31 U.S.C. § 3733(h)(7)(B); see also Department of Justice, U.S. Attorneys' Manual, Section 9-23.000 – Witness Immunity, available at: https://www.justice.gov/usam/usam-9-23000-witness-immunity.
[9] See Department of Justice, U.S. Attorneys' Manual, Criminal Resource Manual, section 718, available at: https://www.justice.gov/usam/criminal-resource-manual-718-derivative-use-immunity.
[10] See United States v. Markwood, 48 F.3d 969 (6th Cir. 1995) (acknowledging that the "statute regarding grant of immunity to person refusing to give testimony after issuance of false claims investigative demand merely allows, and does not require, government to grant immunity to any person refusing to give testimony on grounds of self-incrimination").

EJCBA President Rob Birrenkott, Florida Bar President Ramon Abadin, and EJCBA President-Elect Stephanie Marchman at the May luncheon.

Adequacy of a Product Warning Label[1]

By Brad McVay

In case you haven't noticed, product warning labels are everywhere; just about every product placed into the stream of commerce comes equipped with some sort of warning. Some of these product warnings are downright laughable. *See* Katy Finneran and Maureen Farrell, *In Pictures: 15 Laughable Warning Labels*, Forbes, January 2010, available at www.forbes.com/2010/01/29/safety-caution-product-liability-entrepreneurs-law-warning-labels_slide.html. My personal favorite is the warning label attached to the Huebsch Washing Machine that warns the user: "DO NOT put any person in this washer." *Id*. While some of the warning labels placed on products may seem unnecessary, many product warning labels contain very important safety information regarding the potential risks associated with using a product.

"While not the exclusive method of providing a warning, labels are one of the most effective in communicating danger. This is especially true where the warning label is attached directly to the product."[2] By attaching the warning label directly to the product, the manufacturer can rest assured that in addition to the initial purchaser of the product, all subsequent users of the product also receive the warning. This is important because Florida law imposes a duty on manufacturers to warn the consumer or user of its product of foreseeable risks associated with the use of the product which are known or reasonably should be known to the manufacturer. *See Square D Co. v. Hayson*, 621 So.2d 1373 (Fla. 1st DCA 1993). The duty to warn extends to those who might use the product. *Id*.

Once a duty to warn arises that "duty may be breached by the failure to provide any warning or by providing a warning that is inadequate to sufficiently warn of the danger." Thomas Sawaya, *Personal Injury & Wrongful Death Actions*, Florida Practice Series, § 13:13 (2015-16 ed.). "The difficulty for manufacturers is, therefore, to prospectively determine what may be considered an "adequate" warning for each foreseeable risk." Ross, *supra(fn2)*. This article will attempt to offer some guidance on what it is that Florida courts are looking for when evaluating product warning labels for "adequacy."

Adequacy

"To warn adequately, the product label must make apparent the potential harmful consequences. The warning should be of such intensity as to cause a reasonable man to exercise for his own safety caution commensurate with the potential danger." *Scheman-Gonzalez v. Saber Mfg. Co*., 816 So.2d 1133, 1140 (Fla. 4th DCA 2002) (*quoting Am. Cyanamid Co. v. Roy*, 466 So.2d 1079, 1082 (Fla. 4th DCA 1984). "A warning should contain some wording directed to the significant dangers arising from failure to use the product in the prescribed manner, such as the risk of serious injury or death." *Brito v. County of Palm Beach*, 753 So.2d 109, 112 (Fla. 4th DCA 1998). A warning is adequate if it is communicated by means of positioning, lettering, coloring, and language that will convey to the typical user of average intelligence the information necessary to permit the user to avoid the risk and to use the product safely. *Thomas v. Bombardier Recreational Products, Inc*., 682 F. Supp. 2d 1297 (M.D. Fla. 2010). Additionally, the Florida Supreme Court has held that the sufficiency and reasonableness of a manufacturer's warnings are fact questions appropriate for the jury to decide ***unless such warnings are accurate, clear, and unambiguous***. *Felix v. Hoffman-LaRoche, Inc*., 540 So.2d 102, 104 (Fla. 1989) (emphasis added).

An illustrative case is *Pinchinat v. Graco Children's Products, Inc.*, 390 F. Supp.2d 1141 (M.D. Fla. 2005). In *Pinchinat*, a mother brought an action on behalf of her infant's estate against manufacturer, Graco, after the infant's accidental death by asphyxiation while sleeping in a stroller. *Id*. One of the claims was that Graco failed to provide adequate warnings that sufficiently conveyed the dangers associated with using the product. The court granted Graco's motion for summary judgment finding the warnings provided by Graco were adequate. In finding for Graco the court made the following observations about Graco's warnings:

- the warnings advised consumers in plain language of the dangers and the potentially tragic consequences of failure to use the stroller properly, both generally and specifically;
- the warnings gave specific instructions;
- the warnings were accurate, clear, and unambiguous and were provided in three different languages;
- the warnings were placed in conspicuous loca-

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Adequacy of a Product Warning Label[1]

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tions in the owner's manual and on the product;
- the warnings used varying letter types and fonts to relay to the consumer the danger to a child;
- the warnings clearly state the hazardous results-serious injury or death-which could happen to the infant if such warnings were not followed.
- *Id*. at 1147.

While tragic, the *Pinchinat* case serves as a good reminder of why product warning labels are so very important to both the manufacturer and the consumer. The court notes several times throughout the opinion in *Pinchinat* that the plaintiff either ignored the warnings or chose to do exactly what the warnings told her not to do. *Id*. In the end, the manufacturer was able to get a failure to warn claim involving an infant death dismissed on summary judgment by providing the consumer with "accurate, clear, and unambiguous warnings."

Industry guidelines

As stated above, courts often look at the positioning, lettering, coloring, size, and the language used when making an adequacy determination about a product warning label. *See also, Bombardier, supra*. The good news for attorneys and manufacturers is that in the area of product labeling there are resources available that offer guidelines for developing product safety labels.

"In 1991, the American National Standards Institute published non-mandatory consensus standards concerning product labeling, referred to as ANSI Z535. It outlines recommendations for developing safety labels, including acceptable formats for multilingual labels." Kelly Dallavalle and Richard Hunter, Jr., *Should a Legal Analysis of the Adequacy of Warning Labels Consider Issues Relating to Use of Products by Non-English Speakers*, Atlantic Law Journal, Vol. 16. Additionally, "[c]ourts may also look to industry standards as an indicator that a warning is adequate." Ross, *supra* at 13. In fact, "[s]ome plaintiffs' attorneys have publically stated that compliance with a recognized standard such as ANSI Z535 will encourage them not to allege failure to warn unless the content of the text was inadequate." *Id*.

The ANSI manual is terrific. I was able to access an old edition for free online. The manual provides very detailed information and recommendations regarding the proper size, color scheme, and content of warning labels. If you are interested in this area of law, the ANSI manual is an absolute must have – it will help you tremendously, as will a review of the decisional law. Many case opinions that address issues related to adequacy actually include the warning labels at issue in the body of the opinion (this includes the *Pinchinat* opinion discussed above). By reviewing judicial opinions that consider adequacy you will be able learn from the errors of others.

[1]This article has been edited due to space limitations. The entire article, which contains additional cites and case examples, can be obtained from the author at bmcvay@shrlawfirm.com.

[2]Kenneth Ross and Matthew Adams, Legally Warning Labels: A Conundrum for Every Manufacturer, For The Defense, p.8, Oct. 2008.

Gerald T. Bennett Inn Accepting Applications

The Gerald T. Bennett American Inn of Court is accepting applications for its September 2016 – March 2017 session. Applications can be downloaded online at http://bennettinn.org/ and are due on or before June 30, 2016. The Bennett Inn of Court was established in 2011 to foster a cooperative learning environment between law students, attorneys, and judges, with a strong emphasis on exploring cutting-edge legal issues, mentoring, and interactive learning. The Inn is part of the American Inns of Court, America's oldest, largest and fastest-growing legal mentoring organization. For over twenty years, American Inns of Court have provided judges, lawyers, and law students an opportunity to participate actively in developing a deeper sense of professionalism, achieving higher levels of excellence and furthering the practice of law with dignity and integrity. Meetings are held monthly at the Levin College of Law, with dinner provided. Continuing legal education credits are available via participation in each meeting. Prospective members should reserve the evening of September 29, 2016 on their calendars for the new member welcome reception. Scholarships are available for public interest attorneys and attorneys employed by the State of Florida. To submit applications or request additional information, contact the Membership Chair, Norman Bledsoe c/o Folds & Walker, LLC at (352)372-1282 or norm@foldsandwalker.com. You may also follow the Bennett Inn on Facebook.

"The Ask A Lawyer" dinner at Grace Marketplace was held on April 16 and served nearly 200 residents; with delicious food and music, tableside service of drinks and dessert, it was a wonderful and fulfilling way to interact with those whom the EJCBA has been providing legal services. EJCBA Board members Peg O'Connor (left) and Nancy Baldwin (right) have been generous with their time, and as you can tell by the smiles on their faces, it has been time well spent. (Of course Peg is a 'Happy Lawyer,' she's got the cupcakes!!)

June 2016 Calendar

8 Probate Section Meeting, 4:30 p.m., Chief Judge's Conference Room, 4th Floor, Alachua County Family & Civil Justice Center

9 EJCBA Annual Dinner and Meeting, 6-8:30 p.m., Florida Museum of Natural History

15-18 66th Annual Florida Bar Convention, Orlando

Have an event coming up? Does your section or association hold monthly meetings? If so, please fax or email your meeting schedule to let us know the particulars, so we can include it in the monthly calendar. Please let us know (quickly) the name of your group, the date and day (i.e. last Wednesday of the month), time and location of the meeting. Email to Dawn Vallejos Nichols at dvallejos-nichols@avera.com.

Have a great summer!
The Forum 8 will return September 1.