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Update On Actos Litigation

Studies Link Diabetes Drug's Long-term Use in Some to Bladder Cancer

By Brett A. Emison[1]

A number of scientific studies, including action from the Food and Drug Administration (FDA), linking diabetes drug Actos to bladder cancer has resulted in lawsuits filed across the country against Actos' Japanese manufacturer, Takeda. To understand what this body of litigation will look like over the coming months, it is important to bear note of what is at stake, what has happened before and how this drug and its manufacturer have been viewed recently, in both the court of law and court of public opinion.

Recent Medical Review of the Product — The Actos Link to Bladder Cancer

Actos, (Pioglitazone HCl) is an oral diabetes drug made by Takeda Pharmaceutical Company which was co-marketed in the United States by Eli Lilly Pharmaceuticals as Actos, Actoplus Met, and Duetact. Takeda is Japan's largest pharmaceutical corporation, with its origins dating back more than 230 years. Takeda markets its products in more than 100 countries worldwide with its U.S. subsidiaries based in Deerfield, Illinois. The manufacturer's Global Advisory Board includes key members of the international pharmaceutical industry, including members who either currently or in the past worked for such global brands as Noxxon Pharma, GlaxoSmithKline, Pfizer, Essex Woodlands Health Ventures, Bayer, Smith and Eli Lilly.

Actos is Takeda's most successful product, representing just more than a quarter of Takeda's total revenue with total global sales of nearly $5 billion in FY2010.[2] Sales of Actos in the Americas totaled $3.78 billion in 2010.[3] Actos sales continue to grow and Actos sales improved nearly 12% in 2010.[4] Takeda continues to capitalize on Actos by developing new diabetes drugs based on the same Actos formulation, including Sonias (a type-2 diabetes treatment comprised of a fixed-dose of Actos and glimepiride) and Liovel (which combines NESINA and Actos).[5] Takeda has said it "will continue efforts to obtain new prescriptions for *Actos* by highlighting the importance of improving insulin resistance, the main form of type 2 diabetes."[6]

However, despite Actos' popularity and global sales, studies have now confirmed that Actos greatly increases the risk of bladder cancer in certain patients. These studies have led to dozens of lawsuits filed across the country.

Of importance presently is a French National Health Insurance Plan investigation that showed significant increase in the risk for bladder cancer in patients exposed to pioglitazone compared to patients exposed to other anti-diabetic agents. This study took into account adjustments for age, sex, and use of other anti-diabetic medications. (According to the French review, a cumulative dose of greater than 28,000 milligrams and an exposure of longer than one year led to a significant increase in bladder cancer, particularly in men.)[7]

Brett Emison
Langdon & Emison
911 Main Street
Lexington, MO 64047
660.259.9903
brett@lelaw.com
www.langdonemison.com

The French Medicines Agency this summer suspended use of Actos while the European Union's European Medicines Agency (EMA) completed a risk/benefit analysis of the drug. In late July, the EMA confirmed an increased risk of bladder cancer, but determined that the benefit of Actos outweighed the risk for some patients and mandated a three- to six-month review of each individual patient.[8]

Pioglitazone is also an active ingredient in the medications Actoplus Met XR, Actoplus Met and Duetact. Actos and a similar drug, Avandia, comprise a class of drugs called Thiazolidinediones, which are used to treat Type-2 diabetes. In June of 2011, the FDA released an Actos bladder cancer warning. The FDA's new warning came on the heels of an interim analysis of an epidemiological study conducted by Takeda, the Japanese pharmaceutical company that manufactures Actos.

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Ethics of the Internet:

What You Don't Know Can Hurt You

By Erin Gerstenzang

Introduction

If you are not worried about how you use the Internet, you should be. While the Internet offers attorneys instant access to legal research, marketing and networking opportunities and the conveniences of e-filing, e-service and e-discovery, it also provides us with a wide selection of ways to damage or destroy our careers and professional reputations.

The Model Rules of Professional Conduct (MPRC) were promulgated in 1983, and while they have provided valuable guidance to attorneys in the past, they provide few bright-line rules to attorneys online. It is this uncertainty that can expose practitioners to potentially unforeseeable disciplinary complaints.

In the interests of reducing some of this uncertainty, the following discussion identifies 8 of the most common and problematic issues that arise in the practice of law.

1. Do Not Facebook "Friend" Potential Witnesses

(Rule 8.4: Misconduct, Rule 5.3: Responsibilities Regarding Non-lawyer Assistants)

In California, if an attorney wants to "friend" a potential non-party witness, he, or anyone working for him, must disclose who the attorney is and why he wants access to their Facebook page.

Erin Gerstenzang
Stein & Ward, LLP
1355 Peachtree St, NE, Ste 150
Atlanta, GA 30309
404.881.6500
erin.gerstenzang@steinfirm.com
www.steinfirm.com

> If there is a duty not to deceive opposing counsel, who is far better equipped by training than lay witnesses to protect himself against the deception of his adversary, the duty surely precludes an attorney from deceiving a

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PO Box 660216
Atlanta, GA 30366
phone: 404.451.7781
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PARLIAMENTARIAN
Gibson Vance
218 Commerce St
Mongtomery, AL 36104
phone: 334.269.2343
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EXECUTIVE DIRECTOR
Jody Campbell
PO Box 1207
Crawfordville, FL 32327
phone/fax: 850.926.4599
email: stla@talweb.com

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Eric Romano
PO Box 21349
West Palm Beach, FL 33416
phone: 561.533.6700
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A Message From Our President

I attended my first STLA conference thirteen years ago. I was in awe then and continue to be now. Each year I return home from the conference a better lawyer. I am humbled that the likes of the names included on the membership roster have entrusted me with the reins of this organization. For these things, I am grateful and readily accept the responsibility that lies before me.

My presidency has caused me to reflect upon why I have become so endeared to this organization. The answer is rather simple: STLA is the only organization to which I belong wherein the primary focus is to make its members better lawyers. The acknowledged absence of politics clarifies the STLA mission. It is upon these reflections that I have formed the "theme" of my presidency, the mid-year conference and, ultimately, Mardi Gras: "A View From the Top: Anatomy of a Trial." Again, I recall my first years at STLA, and even now, wherein I truly learned, and continue to learn, how to pursue justice effectively.

I believe that we each have a duty to pass our skills and knowledge to the next generation of lawyers. Further, I believe that our membership collectively possesses a quantum of knowledge that must be dutifully shared. Thus, I am calling upon prior Warhorse winners to chair the CLE programs at Mardi Gras, including Tommy Malone, Vince Glorioso, John Romano, Peter Perlman, Gary Gober, Gibson Vance and Howard Nations. I have high expectations that these lawyers are going to put together some of the top names in CLE talent that will make this year very special and will further serve my presidential agenda.

Rather than have varying topics intermingled throughout the sessions, I have asked the session chairs to direct all speakers to a specific theme for that particular session. The topics will include: voir dire, opening statements, closing statements, cross examination, expert depositions, use of social media and intangibles. I believe this format will help make this a great conference to attract younger, newer members to STLA. We are also contemplating scheduling the CLE to start at 8:00 a.m., and run until 1:00 p.m. each day, then adjourning for the remainder of the day. My thought is that the presentation hall will be packed for the morning, and we will avoid the afternoon absenteeism. I invite comments, suggestions and criticisms in this regard.

I do intend to leave my mark on STLA for those who will serve after me. My agenda for this year is twofold. First, I intend to make a push for increased membership. The recent passing of Bo Mullis brought to bear a very clear message: the future of STLA lies in newer, younger members who we must collectively develop to carry on the tradition of this organization. While I see young talent coming on, there is an untapped pool of potential members who we are ignoring. The time to act and pursue is now. Each year it seems as though we are "competing" for time with other organizations. Our conference overlaps with AAJ; last year the Mardi Gras conference saw a mass exodus for the conflicting AAJ conference. I believe that we must choose now to be proactive in this regard or we will be "reacting" when it is too late. As Morgan Freeman so eloquently said in the movie, Shawshank Redemption, "It's time to get busy livin' or get busy dyin'." (I could make a claim that he stole this line from my father, but I am pretty sure they didn't know each other.)

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In this vein, I challenge each member of STLA to contact one person and invite them to the Mardi Gras Conference. Again, I challenge you: Don't read this and forget it. Do it. I further challenge you to consider sponsoring a young lawyer to attend the Mardi Gras conference. I suffer little doubt that when they experience the width and depth of this conference, they, too, will truly appreciate this organization, its unending resource pool and all it has to offer.

Second, I believe our website needs improvement. It needs to be more representative of what STLA has to offer its members, as opposed to merely existing. I believe that we need to show the nation of lawyers that this group, while widely diverse in our attributes, is approachable and willing to help those with less experience. I would ask that each member take a look at the site and give me your suggestions and comments for improvement. Some of the ideas being considered are adding photos of each member with links to their own site, photos of the executive committee, vendor logos with links to their websites, and perhaps even an STLA list serv, available only to members. Indeed, before the recent Mardi Gras conference, I was approached by a prospective member for sponsorship. I directed him to our website. His response was, "It really didn't tell me anything." The message is clear. We must make our site more conducive to new members. I also anticipate a "verdict" and "settlement" area that highlights the credentials of our membership. I invite those of you who are attending the mid-year conference to come with ideas and be willing to discuss in length these ideas at the board meeting. For those of you who are not attending, take time to visit our site and provide input. My goal is to develop a plan to increase the value of our website and have that plan executed for its debut at the Mardi Gras conference.

The mid-year conference will be held at Hawks Cay in the Florida Keys on October 10-12. I have received mixed input about the near conflict with the AAJ conference in San Francisco. Here again, STLA is the best organization of trial lawyers bar none. We, as members, have a duty to support it. To endear it. And to give our maximum efforts and resources to continue its tradition. I personally invite each of you to make STLA your priority this year, to attend and share in the fun and fellowship and to help me address the tasks at hand. See you in The Keys!

Randy Hall

New Orleans Mayor Mitch Landrieu addresses convention attendees

STLA News, Updates & Events

2013 Mardi Gras Conference Report

This year's Mardi Gras Conference was another huge success—despite the fact that the AAJ Midwinter Conference started on the Saturday of our conference. We had 118 registered attendees, along with 54 guests/spouses. Sixteen exhibitors with a total of 32 people gave us a total attendance of 204. The conference started on Wednesday, with a welcome reception hosted by the JW Marriott Hotel. CLE began on Thursday morning and concluded on Saturday at noon. CLE chairs for this year were Pamela Mullis, Chris Glover, Eric Romano, Tom Young and Chuck Monnett. About 13.5 hours of regular CLE were received from each state, and next year we will add an hour of ethics. A big thank you goes to Justin Kahn for putting the program together and making it available in Dropbox. He also sat through the entire program, making sure there were no problems with presentations.

On Friday night, we had the WarHorse Banquet and Awards program at the Windsor Court Hotel. We had 91 in attendance. Many of the attendees commented that this was the best meal we'd had there yet. Coleman Allen, Jr. presented the W. McKinley Smilely Jr. Lighthouse Award to Charles Zauzig III, from Woodbridge VA. The presentation of the Tommy Malone Great American Eagle Award to Gary Green was made by President Elect, Randy Hall. There were many tears in the room when Gary Gober from Nashville presented the 2013 War Horse Award. J. Marvin "Bo" Mullis, Jr. was chosen to receive the award, and he passed away in October. There to accept the award in his honor was his wife Bonnie and law-partner and daughter, Pamela. On Saturday morning 15 of our people went on the float for the Krewe of Tucks Parade, and at 1p.m., it was time for the annual crawfish boil, which has become a tradition thanks to Bob Shepherd and MediVisuals. The conference ended at 1p.m., as the last beads, provided by Robson Forensic, were thrown from the balcony to the revelers below on Bourbon Street. Next year's conference will start on February 26 and conclude on March 2nd. We hope to see you there!

Fall Retreat Location Change: STLA Heads to Hawks Cay

This year's fall retreat will be held October 9-13 at Hawks Cay Resort in the Florida Keys. Due to the price, we decided not to go to Napa, as originally planned. We will have a reception on that Wednesday night, and over the next couple days enjoy activities such as: golf, fishing, sailing, scuba, snorkeling and swimming with the dolphins. We are planning two dinners onsite and a sunset cruise on Saturday night. We will have a CLE program on Friday morning, and we are trying to have one hour of that be focused on ethics. Michael Haggard and his wife have graciously offered to do a reception at their beach house which is about 5 minutes from Hawks Cay. All rooms are water front, and for those of you who have never been to the Florida Keys, you are in for a treat. Hawks Cay is a little more laid back than Key West and about halfway between Miami and Key West on Marathon Key. As soon as prices are confirmed on dinners and recreation, you will be receiving a registration form.

Smart Devices & Our Ever-Increasing Addiction To Them

By Corey B. Friedman

Submitted to: Deus ex Machina: eDiscovery and Covert Mobile Communications

For some time now, psychologists have been studying the behavioral attitudes of individuals who use smart devices. For individuals who simply "can't hang up," experts have concluded that smart phone users can exhibit characteristics of addiction. As our phones and devices are getting "smarter," we are becoming not just more dependent on them, but actually addicted to them. The ability to discover and oftentimes overshare information simultaneously satisfies our human desire to know and to be.

But, what if users of mobile devices are sending information with the understanding that such information might later be sought after? How does one use a smart device and intentionally keep secret information? Overused are the terms "encryption" and "passcode." The typical smart device user doesn't have the tools to invest in high-tech privacy mechanisms.

The purpose of this article is to expound on the type of mobile information that should be requested through legal discovery so that unknown or overlooked information can be uncovered. For example, did you know that you can make a telephone call from a phone without it being active (which essentially means that documentation of the call does not appear on the call log)? Did you know that you can send text messages from another's telephone number and again, not have those texts recorded in a traditional log? From a friend's telephone number? How about from an enemy's? Did you know that someone's telephone may have additional lines of service though not through their main carrier? Knowing this and that these possibilities exist can help you broaden the scope of your discovery and hopefully uncover otherwise secreted information essential to your case.

Step 1: Get a list of all devices capable of storing or transmitting data owned or used by the target.

In this day and age, mobile computing is not limited to cellular telephones, but also: eReaders, tablets, gaming devices and more.

Most electronic devices are capable of transmitting data through WiFi and/or cellular data, which makes them perfect tools for communicating. The data originating on that device is then transmitted to a remote location, or it is sent from a remote location to that device. Although these devices transmit and receive data, they also can store localized data. For example, if I want to set my alarm clock on my cellular phone, I can do so without depending on a WiFi or cellular connection. Essentially, what I am doing as a user is inputting localized information into the device. In terms of it being uncovered later, no call or data log will reveal this action. Rather, an internal audit of the device's hardware and software may be necessary to uncover it.

It is important in the early stages of your discovery to determine what devices the target owns or uses (irrespective of ownership and title). Just because he or she doesn't own the device, it doesn't mean that they weren't provided a multitude of devices through their employer, or perhaps they were borrowing something from a friend or family member. It is important that you narrow down what devices the target had access to at or around the critical event. Also, it is important to check and see what devices their family and close friends use, as this might provide invaluable information as to same or similar devices owned or operated by the target.

The next thing you will want to do is find out who owns those devices and who owns any cellular or data subscriptions that those devices use. If they are devices capable of transmitting data through cellular means, you should find out who the account holder of that cellular plan is. As a caveat, you should understand that there are mobile devices capable of receiving and transmitting data without a cellular subscription. Usually, these are WiFi devices. In order for them to transmit and receive data outside of a traditional WiFi network, they would have to be operating on the same or another user's mobile access point (also known as MiFi, or a Mobile Hot Spot). These are typically small wireless cards (or mobile phones/and tablets) that have the capability of structuring a mobile network and allowing users to take advantage of their wireless subscription. You will want to find out if the target had access to a mobile access point and who the owner of that access point was.

Further, even if the phone or device is not "factory designed" to be a mobile access point, users have the ability to **illegally** (according to the DMCA as of January 26, 2013) install software to enable the phone or device to share and broadcast its data subscription. You will want to find out if the phone is "Jail Broken" or "Rooted" or otherwise modified to allow non-approved applications to make the device work in a way contrary to the way it was when it left the factory.

Also, these devices, even if kept within factory specifications, may be running what appear to be applications, but are really mobile-web applications. In essence, these applications are accessed through a browser (native or otherwise) on the device. At its release, the first Apple iPhone relied on mobile-web applications and games because there was no app store.

Step 2: Get a list of all applications on all devices.

There are millions of mobile applications. They enable users to do innumerable things with their mobile devices. Banking, shopping, checking news and sports, watching movies, checking mail, texting, browsing the internet, purchasing media, dating and social networking are just some of the ways mobile applications enrich a user's experience with their device. The infrastructure of those applications can provide some insight into their usability, diversion, and how they might otherwise be used to secret information.

It is important to know what applications the target had on each device, at or around the time in question. Applications are easy to delete, so it is important that your spoliation letter address this fact.

Once you have obtained a list of all applications that the target had access to, you can then start contouring your discovery to the devices and applications. While there are millions of applications, there are certain things that you should start looking for in those applications. Namely, whether they can store information, send information to another user, or perhaps the application itself provides access to a service similar (or in competition) to the carrier.

For example, if I use the Flashlight application on my iPhone, as a user, I am inputting data (asking the phone to do something with my gestures and screen touches), and the phone is responding to that set of data input (making the flash function of my phone constantly stay on and turning the phone into a flashlight). There is no data that leaves my phone. The application is completely localized. Now, compare this to the Words with Friends ("WWF") game. There, I am playing a scrabble-like game remotely with friends and data is constantly being received and sent to facilitate the game. In addition, WWF allows me to communicate with other users. **Hint:** Are those communications, sent within a game, part of your current discovery requests?

Once you have the list of applications, you will then want to know whether the application locally stores information,

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Managed by Frank Lorge, who received a Bachelor of Engineering degree in Civil Engineering in 1972, a Doctor of Jurisprudence degree in 1980, and a Masters of Science degree in Environmental Engineering in 1982, all from Vanderbilt University.

515 G Street SE
Miami, Oklahoma 74354
918-919-0648
frank@portagefunding.com
www.portagefunding.com

transmits and receives information or is a hybrid of both. In addition, some applications geotag, via the GPS function in the device, where or when the user inputs information.

Having a list of the applications, as well as any login or username information for each application, will help you in the event that you need to issue a third-party subpoena to the developer of the application, seeking information or data-logs that are germane to the specific user's account.

Something as innocuous as taking a picture and creating mobile status updates actually stores information about where and when you took that picture, or where you were when you updated your social networking status. These are preferences that can normally be changed under the device's privacy settings. Also, users sometimes voluntarily share their location when they "check in" at a particular destination.

You will also want the target to preserve their user settings in the phone. **Hint:** Have you requested a list of every application downloaded by the target?

Step 3: Collect Data

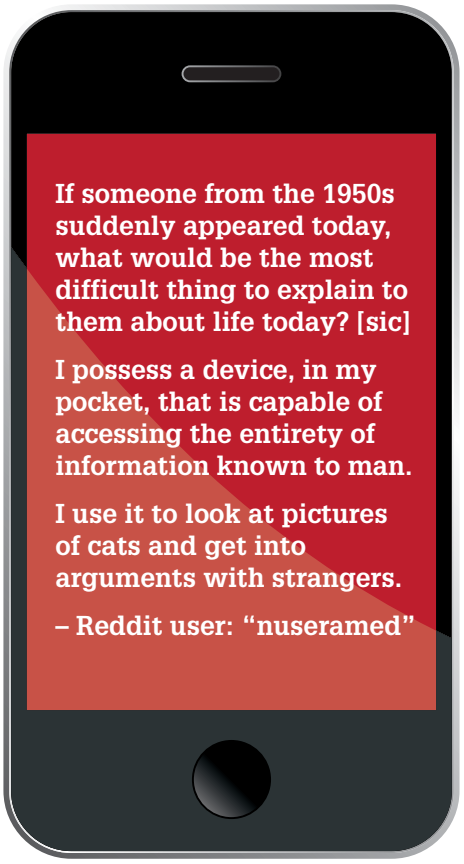
Your collection of data isn't just going to come from a cellular data or voice provider. It is also going to come from the device itself, if you're lucky enough to get ahold of it, and from information/data logs stored by third-party application service providers. Other times there is data that's simply lost and unrecoverable. This is information that is not stored on the device or information that is only stored on the device for a limited number of time, or until an automatic or user-inspired event occurs. For example, most smart devices (if not all) have an Internet browser. The settings in that browser usually record or capture when and what web pages were visited by the user. This information might also be obtainable by searching the cache of the browser too.

You will want to know the behavior of the applications that you're inspecting. You will want to know if the particular application transmits data automatically or if it is in response to user-input, and what data is transmitted (e.g., geo-tagging). You will want to know if the transmission is benign or an active data transmission. For example, is the information being transmitted automatically, creating feedback that goes to the developer so that application stability can be assessed and enhanced? Or is there user-inspired data being transmitted?

You will also want to find out if the particular applications have their own web browsers, chat logs and recordings of geographic input. **Hint:** Are you requesting any and all back-up copies (either on a local machine or in the cloud) of data made when the target's phone is synced?

Basic Examples of Third Party Applications and Their Implications

Spoofing: Spoofing is the ability to manipulate telephone numbers. While there are legitimate uses for spoofing, oftentimes people spoof telephone numbers with malice. Spoofcard is a service where people can purchase time for use of a service that gives them the ability to manipulate their telephone number on another's caller ID. In addition, text messages can be spoofed too. That is, the ability to send a text message and make it appear



as though it came from another's telephone number. **Hint:** Does your discovery request ask the target if they have ever used a spoofing service?

Skype/Fring: Skype and Fring provide text, voice and video conferencing. They are third party services that rely on a data connection (WiFi or Cellular) and give users an alternative forum with which to communicate. Note: an individual may use these applications on their smart device without a voice-plan through a traditional carrier. In fact, they can use these applications with no data plan at all, as long as they are connected to a wireless network. **Hint:** Have you requested your target's Skype/Fring account information? Have you followed up with a subpoena?

Facetime: This is another application, germane to Apple products, that allows users across devices (e.g., iPod, iPhone, iPad, MacBook Pro etc…) to video conference. Use of this service only requires a data connection. **Hint:** Have you made a determination whether your target communicates via Facetime? Was there a communication made at or around the specified time?

Line 2/Viber: Most interesting are these types of applications. Essentially, they enable the user to make data-only devices (those that do not have a voice plan) capable of making and receiving telephone calls. They are strictly dependent upon a data connection. Note: If one of these applications is used on a regular cell phone, the user essentially has a hidden phone number and a hidden call log that will not be revealed by a traditional carrier such as At&t, Verizon and T-Mobile. **Hint:** Have you determined whether your target has an alternative line of service on his phone or internet device? Have you subpoenaed those logs?

Facebook: While Facebook is a popular application, it enables users to communicate without storing their data, text or call logs. If you request this information, it is important that you also request all data, posts and messages that were also deleted.

Competing Interests

All of this information is balanced against one main competing interest—privacy. As a result, some hardware and software manufacturers establish a sense of consumer credibility by not storing, transferring or otherwise recording personal user information. This may be the reason why some of this data isn't saved or doesn't even exist in the first place. That, however, doesn't mean that you should be dissuaded.

What should I look for?

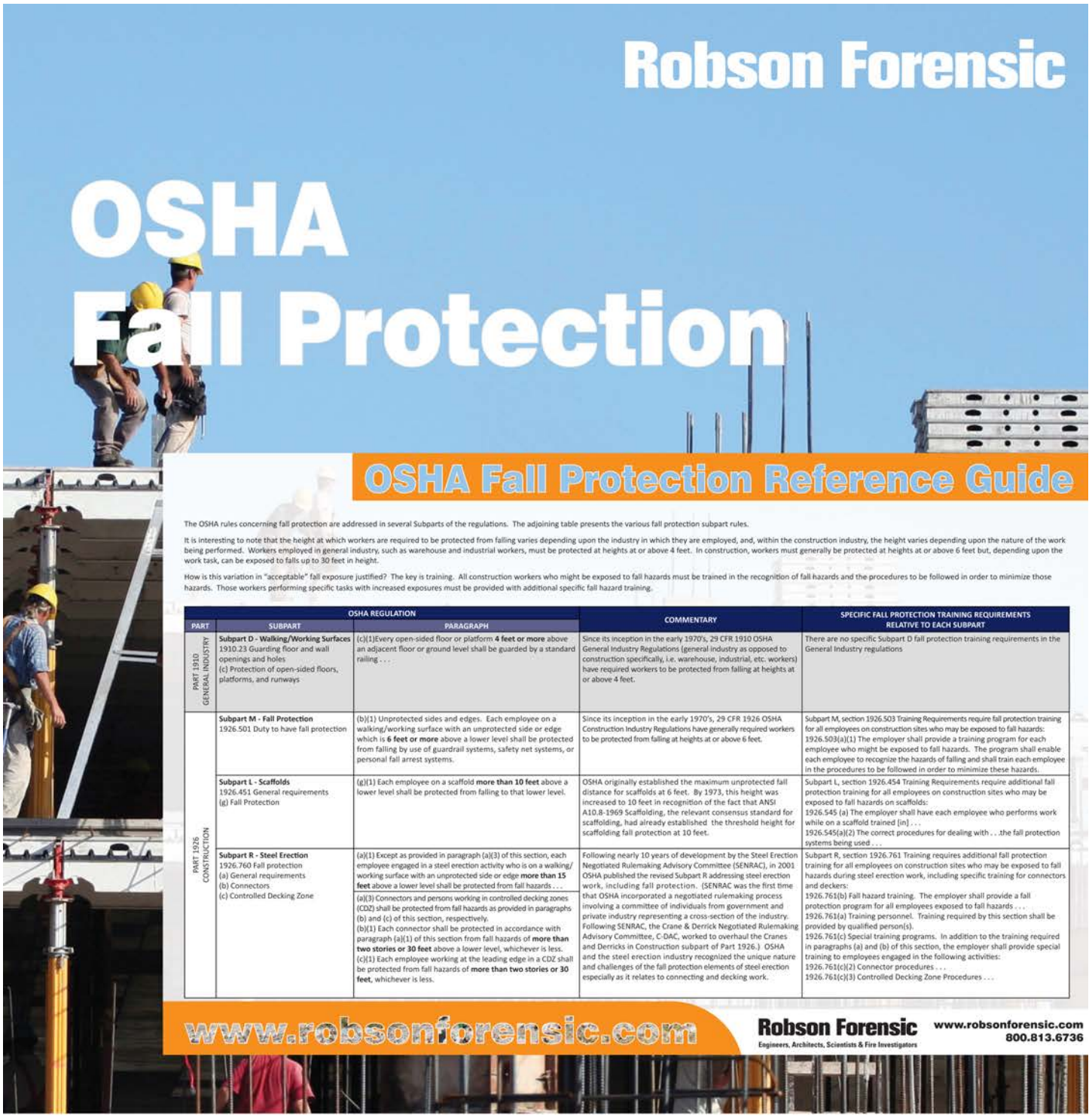
As already discussed, different applications do different things. Once you have received a list of the applications that were available to the target at the time of the critical event, it is important to learn those applications and their capabilities. You will also want to request all identifying user information, account information and, possibly, the passwords. Some of the things you may want to look for include (but are not limited to): geotagging, private chat logs, web browser histories, photographs that do not show up in the general camera roll, password logs, email signatures and how they differ from device to device, the input of appointments and calendar events, GPS address searches, additional hidden accounts, history of videos watched, Internet keyword searches and statements that show what applications the user has downloaded within a given set of time. For example, sending a subpoena to Apple regarding a user's AppStore purchase history will reveal whether that individual downloaded (and perhaps used) certain applications.

Conclusion

These devices are capsules of information that can be used to reveal or otherwise recreate hidden truths. Data is distilled down to locally stored information and information that is in some way transmitted. As an attorney leading an investigation, it is your responsibility to do what you can to recover and uncover this crucial information.

Corey B. Friedman is an attorney at the West Palm Beach, Florida, law firm of Romano Law Group, an "a./v." rated law firm. His practice focuses on various personal injury matters, mass tort, and commercial litigation.Mr. Friedman obtained his J.D., cum laude, from Nova Southeastern University.

Corey B. Friedman
Romano Law Group
P.O. Box 21349
West Palm Beach, FL 33416
561.533.6700
561.533.1285 (fax)
corey@romanolawgroup.com
www.romanolawgroup.com



The OSHA rules concerning fall protection are addressed in several Subparts of the regulations. The adjoining table presents the various fall protection subpart rules.

It is interesting to note that the height at which workers are required to be protected from falling varies depending upon the industry in which they are employed, and, within the construction industry, the height varies depending upon the nature of the work being performed. Workers employed in general industry, such as warehouse and industrial workers, must be protected at heights at or above 4 feet. In construction, workers must generally be protected at heights at or above 6 feet but, depending upon the work task, can be exposed to falls up to 30 feet in height.

How is this variation in "acceptable" fall exposure justified? The key is training. All construction workers who might be exposed to fall hazards must be trained in the recognition of fall hazards and the procedures to be followed in order to minimize those hazards. Those workers performing specific tasks with increased exposures must be provided with additional specific fall hazard training.

OSHA REGULATION			COMMENTARY	SPECIFIC FALL PROTECTION TRAINING REQUIREMENTS RELATIVE TO EACH SUBPART
PART	SUBPART	PARAGRAPH		
PART 1910 GENERAL INDUSTRY	**Subpart D - Walking/Working Surfaces** 1910.23 Guarding floor and wall openings and holes (c) Protection of open-sided floors, platforms, and runways	(c)(1)Every open-sided floor or platform **4 feet or more** above an adjacent floor or ground level shall be guarded by a standard railing . . .	Since its inception in the early 1970's, 29 CFR 1910 OSHA General Industry Regulations (general industry as opposed to construction specifically, i.e. warehouse, industrial, etc. workers) have required workers to be protected from falling at heights at or above 4 feet.	There are no specific Subpart D fall protection training requirements in the General Industry regulations
PART 1926 CONSTRUCTION	**Subpart M - Fall Protection** 1926.501 Duty to have fall protection	(b)(1) Unprotected sides and edges. Each employee on a walking/working surface with an unprotected side or edge which is **6 feet or more** above a lower level shall be protected from falling by use of guardrail systems, safety net systems, or personal fall arrest systems.	Since its inception in the early 1970's, 29 CFR 1926 OSHA Construction Industry Regulations have generally required workers to be protected from falling at heights at or above 6 feet.	Subpart M, section 1926.503 Training Requirements require fall protection training for all employees on construction sites who may be exposed to fall hazards: 1926.503(a)(1) The employer shall provide a training program for each employee who might be exposed to fall hazards. The program shall enable each employee to recognize the hazards of falling and shall train each employee in the procedures to be followed in order to minimize these hazards.
	Subpart L - Scaffolds 1926.451 General requirements (g) Fall Protection	(g)(1) Each employee on a scaffold **more than 10 feet** above a lower level shall be protected from falling to that lower level.	OSHA originally established the maximum unprotected fall distance for scaffolds at 6 feet. By 1973, this height was increased to 10 feet in recognition of the fact that ANSI A10.8-1969 Scaffolding, the relevant consensus standard for scaffolding, had already established the threshold height for scaffolding fall protection at 10 feet.	Subpart L, section 1926.454 Training Requirements require additional fall protection training for all employees on construction sites who may be exposed to fall hazards on scaffolds: 1926.545 (a) The employer shall have each employee who performs work while on a scaffold trained [in] . . . 1926.545(a)(2) The correct procedures for dealing with . . .the fall protection systems being used . . .
	Subpart R - Steel Erection 1926.760 Fall protection (a) General requirements (b) Connectors (c) Controlled Decking Zone	(a)(1) Except as provided in paragraph (a)(3) of this section, each employee engaged in a steel erection activity who is on a walking/working surface with an unprotected side or edge **more than 15 feet** above a lower level shall be protected from fall hazards . . . (a)(3) Connectors and persons working in controlled decking zones (CDZ) shall be protected from fall hazards as provided in paragraphs (b) and (c) of this section, respectively. (b)(1) Each connector shall be protected in accordance with paragraph (a)(1) of this section from fall hazards of **more than two stories or 30 feet** above a lower level, whichever is less. (c)(1) Each employee working at the leading edge in a CDZ shall be protected from fall hazards of **more than two stories or 30 feet**, whichever is less.	Following nearly 10 years of development by the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC), in 2001 OSHA published the revised Subpart R addressing steel erection work, including fall protection. (SENRAC was the first time that OSHA incorporated a negotiated rulemaking process involving a committee of individuals from government and private industry representing a cross-section of the industry. Following SENRAC, the Crane & Derrick Negotiated Rulemaking Advisory Committee, C-DAC, worked to overhaul the Cranes and Derricks in Construction subpart of Part 1926.) OSHA and the steel erection industry recognized the unique nature and challenges of the fall protection elements of steel erection especially as it relates to connecting and decking work.	Subpart R, section 1926.761 Training requires additional fall protection training for all employees on construction sites who may be exposed to fall hazards during steel erection work, including specific training for connectors and deckers: 1926.761(b) Fall hazard training. The employer shall provide a fall protection program for all employees exposed to fall hazards . . . 1926.761(a) Training personnel. Training required by this section shall be provided by qualified person(s). 1926.761(c) Special training programs. In addition to the training required in paragraphs (a) and (b) of this section, the employer shall provide special training to employees engaged in the following activities: 1926.761(c)(2) Connector procedures . . . 1926.761(c)(3) Controlled Decking Zone Procedures . . .

Falls are the leading cause of death in construction, accounting for one third of all construction-related fatalities. These falls are preventable through proper planning, the use of the right equipment, and appropriately training employees. OSHA 1926.501 requires employees to be protected from falling at heights six feet or more above a lower level.

For your convenience the Civil Engineers at Robson Forensic have compiled the OSHA Fall Protection Reference Guide. This guide covers the construction fall protection standards that are most commonly cited in the course of our casework.

Contact Nick Maguire for a free, full-sized version the OSHA Fall Protection Reference Guide.

nmaguire@robsonforensic.com

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www.robsonforensic.com | 800.631.6605

A-Z Basics Of Proving Closed Head Injury

By Bernard Walsh & Elisabeth DeWitt

Closed head injury situations are some of our toughest cases to convince insurance companies and juries to accept. The problem in the past has been that these cases turn on the believability of the plaintiff, their families and their co-workers. Anyone handling such claims must first start by referring to the injury as a Traumatic Brain Injury (TBI) with all parties concerned, including the expert witnesses.

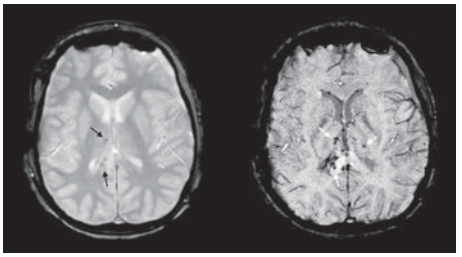
To effectively work these cases, one must understand the new diagnostics available and how they coincide with the client's complaints. To do this, you must have your radiologist (nuclear or neuro) talking and working hand-in-hand with your clinical expert. The clinical expert should be a neurologist, neuropsychiatrist, psychiatrist or psychologist. Some of the modern diagnostic tools we have used in our TBI case include SPECT (single photon emission tomography) scans and PET (positron emission tomography) scans.

Finding a radiologist who understands the injuries and can diagnose coup contrecoup (CCC) and brain shear is critical. CCC is when the brain moves forward to back or side to side, suddenly and forcefully, damaging two sides of the brain. Brain shear is the movement of the brain's grey matter over from the white matter due to centrifugal force. When this happens, the delicate blood supply and neuron connections are severed.

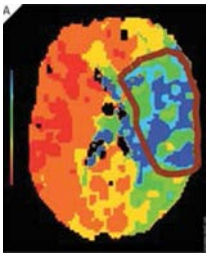
During your trial, when using PET or SPECT scanning, you must have your radiologist review how both diagnostic studies are used, not only for TBI, but also for other problems or diseases unrelated to trauma, for example, heart disease. Your radiologist must get down from the witness stand and show and explain your client's diagnostic study and compare it to a normal PET or SPECT scan in front of the jury. Lastly, they must go into great detail as to either or both tests being recognized as authoritative by the American Radiology Association.

Please be aware that the technology for diagnosing TBI is advancing daily. Some of the best diagnostic studies involve MRI (magnetic resonance imaging). Three and seven

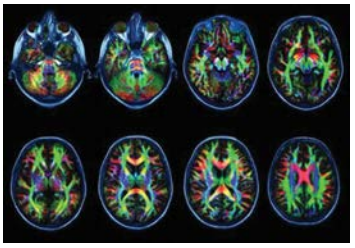
Traumatic Brain Injury Diagnostic Technology



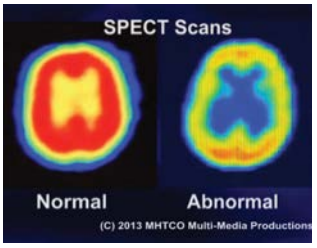
SWI



DWI



DTI



SPECT

tesla MRI magnets show much improved imaging for detecting micro hemorrhages or other subtle injuries to the brain. You must talk to your radiologist about focal (contusions and hematomas) versus diffuse (diffuse axonal injury and diffuse micro vascular damage) injuries. There are several different MRI tests that can be used to better detect TBIs. The first is SWI (susceptibility weighted imaging). SWI is sensitive to iron, so it is a great tool to reveal even the smallest hemorrhages. FMRI (functional magnetic resonance imaging) also can be used to reveal hemorrhages. Another excellent study used to detect ischemia is DWI (diffusion weighted imaging) that measures ADC (apparent diffusion coefficient). DTI (diffusion tensor imaging) is used to detect and reveal axon injuries. Last, MR Spectroscopy is used to detect altered biochemistry in the brain. Going into the exact science behind these diagnostic studies goes beyond the scope of this article, but prior to any testing, they must be discussed with you radiology expert. As you can see, TBIs are now easier to detect and prove with modern technological advances in diagnostic studies.

Please keep in mind that TBI cases are some of the toughest cases to prove. You should understand that time consuming effort is required in every one of these cases. The attorney must be interactive in correlating the diagnostic imaging findings with the clinical findings. Therefore, a meeting or phone conference between the attorney, clinical physician (neurologist, psychiatrist, neuropsychiatrist and/or neuropsychologist) and the radiology expert (nuclear or neuro) at every phase of the workup of the case is necessary. Finally, your experts need to be able to discuss the long term development and effect on the brain from a TBI. You should have your experts discuss and show diagnostic findings of patients many years after suffering a similar head injury. Also, have your experts talk about beta alkaloids that begin to form on and in the brain as the body's response to the injury to the brain. Beta alkaloids are often found in the brains of patients with Alzheimer's disease. Please do not hesitate to contact us with any questions about your TBI cases.

Bernard Walsh
www.getmejustice.com
5291 Office Park Blvd.
Bradenton, FL 34203
941.752.7200 (phone)
bwalsh@getmejustice.com

Elizabeth DeWitt
www.getmejustice.com
5291 Office Park Blvd.
Bradenton, FL 34203
941.752.7200 (phone)
bdweitt@getmejustice.com

Using Technology To Improve Customer Service And Maximize Client's Recovery

By Howard Spiva

The latest technology is revolutionizing the way personal injury cases are handled, and innovative law firms can take advantage of this technology to lead the way to the future of effectively representing personal injury clients. You can put a Google Nexus tablet in the hands of every client, providing each client with quick and easy tools to help you better handle their claims.

Instead of maintaining the image of the personal lawyer clinging to armfuls of paper, you can break away from the stereotype. By equipping your clients with a fleet of the latest technology, you can quickly, seamlessly and securely tell your clients' stories in a way never before possible.

The Nexus, which you can loan out to your seriously injured and hospitalized clients, is equipped with various evidence-gathering and communication features that will keep client and lawyer in constant contact throughout the process of the case.

From day one, specialized applications begin capturing interviews with medical providers, friends, family and others to document the victim's post-injury life and build their strongest case possible.

The tablet also contains apps that will give a holistic approach to healing, with hopes of reducing stress and assisting the healing process by including reading materials, soothing soundtracks and even entertaining games to pass time.

Often, when people are injured and have legal representation, the only communication tool they have is a phone to call their attorney to ask questions. By providing Google tablets that are pre-loaded with helpful, customized apps, you can enhance your level of service and maximize the results for your clients.

In using innovative Google technology, you raise the bar for all attorneys. It gives clients unprecedented access to the handling of their cases and gives the lawyer an all-access pass to previously untapped gold nuggets of evidence. This is how attorneys should operate in the 21st century.

At the touch of a button, you and your client can quickly and securely share information via existing Google programs like Gmail, Google Docs, chat features and Google calendaring.

Additionally, customized applications can be programmed to document your client's medical recovery, their harms and losses, and to illustrate daily challenges and struggles.

No one can tell your client's story better than your client.

Howard Spiva
48 W Montgomery Crossroads
Suite 202
Savannah, GA 31406
912.920.2000
howard@spivalaw.com
www.spivalaw.com
www.spivallawapp.com

The more evidence you have that proves your client's harms and losses and how the injury has changed your client's life, the better you can paint a picture for the insurance company, the defense lawyer and ultimately the jury.

By utilizing the evidence gathered via the Google Nexus, you can build stronger cases that can lead to quicker resolutions and greater compensation for the client. The Google Nexus tablet enables you to put the "personal" in personal injury and propels your client-first approach into the 21st century. We have recently implemented this technology into the way our firm handles cases, and the results have been outstanding. Our clients love the interaction and the added sense of comfort that comes from their direct participation in their own case, and it has made our work more efficient and effective.

Anatomy of a Fire Case

By Randy Hall

According to recent statistics released by the United States Fire Administration (the "USFA"), on an average day, fire departments responded to 4,250 fires resulting in 11 deaths and 49 serious injuries.[1] Studies indicate that deaths and injuries from fires are directly associated with socioeconomic status, education, demographics and location. For example, Alabama, Arkansas, Mississippi, Oklahoma, Tennessee and West Virginia have fire death rates that exceed 25 deaths per million. 57% of those who perished were either African American or American Indians. Thirty-four percent[2] of the deaths are associated with non-home owners; 95% of the deaths occurred in multi-family dwellings. According to the United States Centers for Disease and Control, children under the age of 4, the elderly, the poor and those living in sub-standard housing are at the greatest risk to die in a residential fire. These groups personify demographics of those who typically rely upon rental housing.

Despite these alarming death rates, the cause of most fires, and deaths, remains unknown due to inadequate or limited investigatory resources of local fire departments. Once arson is eliminated as a cause of a fire, investigators typically drop the investigation due to lack of resources or training. Even if arson is determined to be the cause of the fire, there still may be a case for the innocent when fire protection codes have been violated. Examples of such codes include the location and operation of smoke detectors, fire extinguishers and the publication of evacuation plans.

Any determination that the fire or resulting deaths were caused by electrical defects, improper repairs, defective appliances, improperly installed or missing smoke detectors, is left to the civil justice system. According to the USFA, 15.4% of fires are directly related to electrical malfunction and 47% of the causes remain unknown. Of course, the data from which these statistics are formed comes from the official fire reports of the local fire departments.

Many rural states and areas have no fire codes per se. However, many times either the state or the local governing bodies have adopted the International Fire Code ("IFC") as their own "local fire code." The IFC establishes safety regulations affecting or relating to structures, processes, premises and safeguards relating to:

> *i) conditions hazardous to life, property or public welfare in the occupancy of structures or premises*
>
> *ii) fire hazards in the structure or in the premises from occupancy or operation*
>
> *iii) matters related to the construction, extension, repair, alteration or removal of fire suppression or alarm systems.[3]*

The IFC makes it clear that is it unlawful to violate its safety features and is directed at property owners:

> *It shall be unlawful for a person, firm or corporation to erect, construct, alter, repair, demolish, or utilize a building, occupancy, premises or system that is regulated by this code, or cause the same to be done, in conflict with or in violation of any of the provision of this code.[4]*

The IFC is abundantly clear about who bears responsibility for correction of defects in housing:

> *Correction and abatement of violations of this code shall be the responsibility of the owner.[5]*

Specific Provisions Contained in the National Fire Code

The IFC is a comprehensive compilation of regulations, the stated intent of which is to reduce the hazard of fires. Among many areas that are addressed, the IFC legislates the location of smoke detectors, how they must be installed and interconnected with each other, the location, quality and rating of portable fire extinguishers, electrical defects and wiring, and the adoption and required elements of a life safety and evacuation plan, as well as employee training that is required with such plans.

> *The IFC sets forth its own property classification tables typical of local zoning ordinances.*

[6] For example, motels and hotels are designated R-1; apartments and boarding houses are designated R-2; duplexes and rent houses are designated R-3. Designations R-1 and R-2 must have a published Fire Safety and Evacuation Plan which includes emergency egress and escape routes, floor plans, exits, and locations of portable fire extinguishers.[7] The IFC further requires that employees of these designations receive training in fire emergency procedures, fire prevention and evacuation training as a part of their orientation and not less than annually thereafter.[8] Diagrams with at least two evacuation routes must be posted at or near each egress point. Designations R-1, 2 and 4 must have portable fire extinguishers of the quality, size and in locations as required by NFPA[9] 10.

Multiple station, interconnected smoke alarms are required in designations R-1, R-2, R-3 and R-4. Interconnected smoke alarms are defined as those connected in such a manner that the activation of one alarm will activate all alarms. 10 Locations shall include one detector in each sleeping area and on the wall or hallway immediately outside the sleeping areas. 11 In new construction, smoke detectors operated primarily by batteries are not allowed. Finally, the IFC requires that the owner abate any and all electrical hazards or other defects which constitute a fire hazard.

Timing is Everything

The standard for prosecution of fire cases is not unlike any other. The sooner you are actively involved, the better chance you have to secure valuable evidence. In most cases where serious injury or death is involved, your experts will be denied access to the scene until the arson team completes their investigation and then again may be denied access until the insurance company has completed their investigation unless litigation is filed. The lesson is clear: you snooze you lose! Thus, send your spoilation letter the day you are retained and insist your experts be allowed equal access to the fire scene when the arson team releases the site. Be willing to do what it takes to get your expert there the same or next day if the opportunity arises.

The primary focus of the local fire investigators is to eliminate arson as the cause of the fire. Unfortunately, the collection of evidence to eliminate arson is not conducive to finding other causes and origins, and in most cases, is counterproductive. Savvy C & O experts cringe when they discover that the scene has been disturbed in any fashion, as even the location of a fallen structure in the fire scene can provide valuable clues to the point of origin of a fire. Likewise, movable objects such as chairs, tables and the like can be "pushed" to certain areas by water pressure from fire hoses, which can also provide clues as to the point of origin. Thus, your expert should be on site as soon as possible observing the initial conduct of the public investigators, even if from afar. Further, your private experts can encourage extensive photographs of the scene prior to the "sifting and moving" of articles found in the aftermath. The lesson is clear: act quickly to preserve the fire scene.

Choose the Right Expert

The right experts increase the value of your case; the wrong experts spell disaster. Cause and origin experts follow specific disciplines, much like physicians. Be prepared to treat your fire case much like a medical malpractice case. Don't expect an orthopedist to testify about the standard of care of a cardiologist. Be prepared to hire several experts who are knowledgeable in their own specialties that pertain to the facts of your case. Your team could include a traditional Cause and Origin expert, an IFC expert, a property manager expert, an electrical engineer, an electrician, and perhaps an X-ray laboratory, along with appropriate engineers, if potentially defective products are found. Further, a medical examiner who can testify as to the etiology, and thus pain and suffering commensurate with either smoke inhalation or being burned to death, is mandatory. Autopsies are not optional. Finally, be willing to spend the money to hire the best available expert as the defense team will secure nationally known experts to defend.

The "checklist response" is to hire an expert to determine cause and origin of the fire, write a check and wait for a report hoping that the cause is not related to arson, smoking or cooking. Be mindful, even if your own expert or the local fire investigator determines the cause to be resident abuse or criminal activity, this may not signal the end of your case. Specifically, even in these cases the cause of the injuries may be the result of inoperable or improperly installed smoke detectors, lack of an evacuation or fire safety plan or inadequately installed or serviced fire extinguishers. In such cases, you need an expert who is well-versed in the safety features set forth in the IFC.

In order to choose the right experts and eliminate the wrong ones, a thorough pre-investigation with your client and witnesses is mandatory. Ask questions such as the following:

- *Where did you first see the fire or smoke?*
- *Do you know what caused the fire?*
- *How many persons lived in the residence and what were their ages?(did the landlord allow over occupancy)*
- *Was the kitchen (where many fires originate) primarily electric or gas?*
- *When was the residence constructed? (indicative of what type of electrical branch wiring may be used in the home)*
- *Have there been any recent remodels, changes or additions to the residence? (you may need a contractor or an electrician)*
- *Did all outlets, switches and other appliances work as expected?*
- *Did the residents routinely "reset" breakers? (you will need an electrical engineer)*
- *What types of appliances were used and where were they purchased? (you may have a products liability case)*
- *Who performed maintenance?*
- *When was the last time maintenance was performed and in what area?*
- *Did other residents complain of defects?*
- *Was there an evacuation plan?*
- *Were there fire extinguishers positioned in individual units, and if so, where were they located?*
- *Where were the smoke detectors located and did they go off?*
- *From which direction did the fire hoses spray?*
- *Were they overhead or from the ground?*
- *From what direction did you egress and why?*

Conduct Your Own Investigation

While proper discovery can make or break a fire case, independently obtained evidence can be filled with low hanging fruits. Conduct your own investigation. The smoking gun may be effortlessly at your fingertips.

In April 2009, a father died trying to save one of his three children, who also perished in an apartment complex fire in Memphis Tennessee. Our own investigation revealed that fourteen people had occupied the three bedroom apartment for over four years. Despite documented knowledge that the property manager was aware of this over-occupancy, no action was taken, provided the rent was timely paid.

Over 100 pieces of fire equipment and 200 firefighters responded to the alarm. There were multiple TV news clips with various tenant interviews espousing multiple causes of the fire. By the time our firm was hired, the burned out structure had been razed and replaced with a new structure. The official fire report eliminated arson and listed the cause as "unknown." The evidence was gone. The case was faltering before it ever started. We had no basis upon which to seek any justice for our clients. It was decided on a routine trip to our Memphis office that we would at least go look at the site before we closed down the case. Our hopes were not high.

Donning a pair of jeans and my oldest t-shirt, we visited the apartment building for a walk around. During this walk around, a man was found recharging an air conditioner. When asked about the fire that had occurred months prior, he disclosed immediately that he thought the cause was that "damned aluminum wiring." It didn't take long to file the case.

A trip to the city fire department uncovered more critical evidence. A simple FOIA request of all prior fire reports and inspection reports at the complex demonstrated there had been multiple fires at the complex over the prior five years. At least three of those fire reports indicated that the cause of these particular fires was arcing from "worn out" aluminum wiring. A report from a fire that had occurred just 120 days prior to the fatal fire contained the following handwritten words:

> ***" Aluminum wiring-shorted and burned its connector…Management notified. WITHOUT CORRECTIVE ACTION…If all other buildings in this complex are wired the same…There is potential for very serious situation. Management Advised."***

Similarly, inspection reports indicated that the complex was in violation of the smoke detector regulations contained in the IFC. The building permit for the property led us to architects, physical site plans and the names of contractors used to construct the facility.

The introduction of cable TV programs such as "DIY" and "Flip This House" has spawned a new generation of property owners who, having spent thirty minutes in front of cable TV, have anointed themselves capable of rewiring a house, thus saving much in contractor expense.

If the landlord is Section 8 qualified (low income housing subsidies), obtain the past annual inspection reports for the property. Unknown to most, the property owner or his agent, must annually certify, under penalty of perjury, that the property is safe, habitable and in compliance with local housing codes. This written certification is evidence of fraud when there are known code violations. Finally, identify and contact both current and prior tenants of the effected site and other properties owned by the landlord. Search for prior tenants in the local district court records where they have been evicted or sued for unpaid rents. Lack of maintenance of the property is an often stated defense. In the Memphis case, the rent rolls were discovered and a survey/questionnaire was sent to every current and former resident of the complex. A respondent to our survey possessed a table lamp and its cord that had literally caught on fire when it was plugged into a particular outlet in the complex. The cause of this "flash fire" was due to the arcing from the aluminum wiring.

Identify All the Defendants and Their Level of Involvement

Many leaseholds involve absentee owners with an onsite management company. Management agreements typically require the management company to collect rents, keep occupancy high and provide routine maintenance for the property. These properties are typically highly leveraged and the success of the entire venture, including continued financing, relies on high occupancy rates which spell profits. In the Memphis case, the owners were located in California; by the time the fire occurred two separate management companies had been involved. The former was dismissed by the owners largely due to inadequate occupancy rates. Expect these absentee owners to stand on their management contracts regarding defects and inadequate maintenance of a property. Do not be deterred by this as the IFC places ultimate responsibility for the abatement and correction of such conditions upon the owner.

Finally, in cases where financing is involved, lenders typically require a formal inspection of the property. These inspections can result in a hundred page document performed by engineers or a three page traditional home inspection report. Discovery of any and all due diligence surrounding the purchase is required. In many cases, the seller still possesses—and many times provides the buyer with prior inspection reports, as well. In the Memphis case, named defendants were ultimately the prior and current management companies, the current owners, prior owners and the engineers who had conducted the formal inspection of the property for the lender.

Identify What Motivates Your Owners and Property Managers

The introduction of cable TV programs such as "DIY" and "Flip This House" has spawned a new generation of property owners who, having spent thirty minutes in front of cable TV, have anointed themselves capable of rewiring a house, thus saving much in contractor expense. The lesson here is clear and discovery should be fashioned accordingly.

In the Memphis case, discovery was directed at other properties owned and managed by the defendants, as well as monies expended to "increase the occupancy rates." We quickly learned the owners routinely followed a business model of purchasing distressed properties, applying a facelift to common areas to increase occupancy levels and thereafter selling the property at a profit. Owners with this business model will spend enormous sums on landscaping, paint and aesthetic measures to attract new tenants, but are demonstrably reluctant to focus on life safety measures such as structural issues, electrical and plumbing defects.

Discover the initial budget and business plan from the lender's files, as it provides valuable clues to the landlord's motives. In the Memphis case, a very succinct plan was written which focused on how the owner would repay the loan with aesthetic improvements resulting in increased occupancy and, of course, profit. Not a word therein addressed any plan to discover and remedy code violations or the ultimate safety plans for the residents.

Finally, direct your discovery at budget reconciliation and performance data which involves discussion identified defects and the willingness to make the property safe. In the Memphis case, an email between the regional owner/manager and the local property manager read as follows:

> ***" I need to know the cost of the new smoke detectors BEFORE we spend the money."***

Later in the same email, the following language was found:

> ***" That place better look like Disneyland when I get there on Wednesday."***

Fashion the Right Discovery

The devil is in the details in every fire case. Direct discovery at contractor invoices for repairs, tenant maintenance requests, tenant complaints and the qualifications of those who are performing repairs. Identify what the local codes require with respect to electrical repairs and the qualifications of those who make them. Make a time line of the resident complaints and compare it to the response by owners or management.

In 90 days prior to the Memphis fire, tenants lodged over 55 electrical-oriented complaints from residents ranging from "my outlets don't work" to "I smell wires burning" to "the breakers are 'popping.'" Of those 55 complaints, a licensed electrician was called upon for repairs only a handful of times. Each electrician identified "burnt aluminum wiring" and other electrical defects in the property on the face of their invoices. Of the remaining electrical complaints, it was discovered that an unlicensed maintenance technician employed by the property manager with no knowledge of the electrical codes was performing repairs. When he was questioned about how he knew his repairs were up to code, his response was, "Home Depot."

Discover spending limits of the local property manager and under what circumstances they assign a maintenance job task to their in-house "jack of trades" maintenance man or a certified licensed professional. In most cases, the person who is making this "safety related" decision has no knowledge of maintenance/electrical issues and will readily admit that the decision was purely cost-motivated.

Summary

Fire cases are not for the weary or cost-conscious. Simply stated, they are cases mandating you kick every rock in the backyard, or the defense team will. Be prepared to meet their expert with your own. In the Memphis case, 55 video depositions were conducted; not less than 30 additional targets we deemed mandatory. Our experts comprised ten distinct disciplines. An X-ray lab with five different engineers meticulously dismantled a computer, VCR, baby bottle warmer and two power strips, over six days looking for any clue as to the cause and origin of this fatal fire. We invested in excess of $500,000 in the case. This client's success story was largely due to the private investigation techniques utilized and our willingness to invest in the case to find a remedy for our clients. The Memphis case ultimately settled at mediation for $11,000,000.00. As part of the settlement, the owners agreed to produce and provide to each current and prospective tenant a video warning of the dangers associated with fires.

1. Drawn from the Fourteenth Edition of "A Profile of Fire in the United States" published by the United States Fire Administration/National Fie Data Center
2. Based upon 2010 U.S. Census results
3. IFC Section 101.2
4. Municipalities which adopt the IFC traditionally make violation of its ordinances a misdemeanor.
5. IFC Section 107.5
6. See Chapter 2, Definitions
7. IFC Section 404.3.1 and 404.3.2
8. IFC Section 406.1
9. National Fire Protection Association
10. IFC Section 907.2.10.3
11. IFC Section 907.2.10.1.2

Randy Hall
Law Offices of Gary Green, P.C.
1001 La Harpe Blvd
Little Rock, AR 72201
501.224.7400
501.224.2294 (fax)
randy.hall@ggreen.com
www.ggreen.com

ACTOS LITIGATION from page 1

Because the warning label was only recently changed, many people taking Actos may not realize that studies have linked prolonged use of Actos with bladder cancer. An FDA study examined a suspected link between the prolonged use of Actos and an increased risk of bladder cancer.[9]

"The U.S. Food and Drug Administration (FDA) is informing the public that use of the diabetes medication Actos (pioglitazone) for more than one year may be associated with an increased risk of bladder cancer," the report states. "Information about this risk will be added to the *Warnings and Precautions* section of the label for pioglitazone-containing medicines. The patient Medication Guide for these medicines will also be revised to include information on the risk of bladder cancer."[10]

A backward look at Actos' own label reveals a slow progression leading up to the current FDA warning. In 1999, as the drug was being tested, Takeda acknowledged that "(d)uring prospective evaluation…in clinical trials **up to one year** in duration, no new cases of bladder tumors were identified" (emphasis added). In addition, since testing had been done on animals for the drug, the product had added a caveat about the disconnect between animal testing and actual results on humans.[11]

But in 2003, the label eliminated language that, "[t]he relationship of these findings in male rats to humans in unclear" from label. Precautions mentioned at this time were Carcinogenesis, Mutagenesis, and Impairment of Fertility. Three years later, in 2006, data from two new studies was added, as an occurrence of .44% (drug) v .14% (control) of bladder cancer was found, meaning patients taking Actos were 3 times more likely to develop bladder cancer.[12]

Takeda is currently engaged in a ten-year observational cohort study with Kaiser Permanente Northern California, which included 193,099 Kaiser Permanente patients with diabetes.[13] The Kaiser Permanente study showed a 30% increase in bladder cancer risk for patients taking Actos for 12-24 months and a 50% increased bladder cancer risk for patients taking Actos for 2 years or longer.[14] The review confirmed that long-term Actos users and Actos users with the highest cumulative dose of the drug did show an increased risk.[15]

More than a decade after Actos was first studied, in the summer of 2011, at the request of the FDA, detailed information about Actos' link to an increased risk of bladder cancer was finally added, including a whole section on urinary bladder cancer. (Though the label also says, "There are insufficient data to determine whether pioglitazone is a tumor promoter for urinary bladder cancer.")[16]

The FDA has now advised Actos users that taking the drug for longer than a year increases the user's risk of developing bladder cancer.[17] The longer a patient takes Actos, and/or the higher the dosage, the greater the increased risk of cancer. The FDA also acknowledged that, after a French study pointed to an increased risk of bladder cancer, Actos had been removed from the European market pending further investigation.[18] In July, however, the Committee for Medicinal Products for Human Use (CHMP) recommended that new labeling warning of the associated cancer risk be placed on the drug, but did not advise taking the drug off the market. [19]

In upholding its July 2011 decision, the CHMP said that "pioglitazone remains a valid treatment option for certain patients with type 2 diabetes, when certain other treatments (metformin) have not been suitable or have failed to work adequately." In its review of pioglitazone, the CHMP noted the increased risk of bladder cancer, but said pioglitazone should be available as a second- and third-line treatment for patients who have no other options.[20] In light of this new information, the FDA said that Actos should not be prescribed to people with bladder cancer or people with a history of bladder cancer.21

In addition to the bladder cancer link, the *New England Journal of Medicine* also noted cardiovascular side effects caused by Actos. "There have been ongoing concerns about the safety of the diabetes drugs containing rosiglitazone (Avandia, Avandaryl, and Avandamet) — a thiazolidinedione antidiabetic agent indicated as an adjunct to diet and exercise to improve glycemic control in adults with type 2 diabetes mellitus," the authors in the Journal study report. "A meta-analysis of controlled clinical trials found increases in the risk of myocardial infarction and a near-significant increased risk of death from cardiovascular causes when rosiglitazone was compared with placebo or with standard diabetes drugs."[22]

The *Journal* authors summarized that the FDA is taking precautionary steps with Actos because of the agency's assessment of all available data on the cardiovascular risks of rosiglitazone. "There was no reliable evidence to refute these cardiovascular safety concerns," the agency concluded.[23]

> *"After considering the data, 18 members of the advisory committee found significant cause for concern about an increase in ischemic cardiovascular events with rosiglitazone relative to other non-thiazolidinedione antidiabetic agents, whereas 6 committee members did not. Twenty-one members believed that the cardiovascular risk with rosiglitazone was significant as compared with pioglitazone. Three members did not reach this conclusion. This 21-to-3 vote also reflected recognition that available evidence on pioglitazone, including the results of a well-designed trial in high-risk patients, does not show a signal of a cardiovascular ischemic risk."*[24]

The Actos Patent Litigation; the Drug's Success in the Marketplace; and Relevance to Actos Bladder Cancer Lawsuits

Prior to those studies identifying Actos' link to bladder cancer and heart damage, the most interesting dispute over the product may have been a patent dispute in which the owner of the patent for the diabetes drug brought infringement actions against manufacturers of generic versions.[25]

In 2006 Takeda and Takeda Pharmaceuticals North America, Inc. brought a patent action under the Food Drug Cosmetic Act, 21 U.S.C. §§ 301-99, the Drug Price Competition and Patent Term Restoration Act of 1984, Pub L. No. 98-417, 98 Stat. 1585 (1984) (codified in scattered sections of titles 21, 35, and 42 U.S.C.) (the "Hatch-Waxman Act"), and under the patent laws of the United States. In this piece of litigation the manufacturer of Actos alleged that four generic drug manufacturers had infringed and would induce further infringement of Takeda's patents protecting its leading Type 2 diabetes drug.[26]

In that case, a bench trial was held between January 17 and January 30, 2006, to resolve the challenges made to Takeda's U.S. Patent No. 4,687,777 (" '777 Patent"). This patent protects the invention of the chemical compound 5-% 8B4-[2-(5-ethyl-2-pyridyl)ethoxy]benzyl}-2,4-thiazolidinedione ("pioglitazone").[27]

Alphapharm Pty. Ltd. and Genpharm, Inc. contended that the invention was obvious based on the disclosure by Takeda of a structurally similar molecule in the prior art. Mylan Laboratories, Inc., Mylan Pharmaceuticals, Inc., and UDL Laboratories, Inc. contended that Takeda deceived the Patent and Trademark Office when it applied for the '777 Patent, principally by misrepresenting the results of efficacy and toxicity tests. Neither challenge was deemed to be meritorious.[28]

Notably, the Takeda patent suit decision foreshadowed the legal filings that would come five years later following the studies showing Actos' side effects. "(T)he '777 Patent discloses a remarkable invention. After decades of work to develop an anti-diabetic treatment, Takeda discovered a pharmaceutical agent that was both effective and non-toxic. This represented a significant advance over compounds disclosed in the prior art. Takeda's application to the PTO for the '777 Patent reported the very analysis of test results on which Takeda itself had previously relied to select the pioglitazone molecule from the thousands it had synthesized and the hundreds it had tested. Faced with the task of proving their cases by clear and convincing evidence, both Alphapharm and Mylan have failed to make even a rudimentary showing that the invention was obvious or that Takeda engaged in inequitable conduct. Their challenges to the '777 Patent are rejected."[29]

The patent decision stated that the patent was not obviously invalid, and that Takeda did not engage in inequitable conduct. Therefore, it may be argued in the Actos bladder cancer and heart damage litigation that Takeda itself has admitted that Actos is unique and that its properties are not shared by other drugs.[30]

The patent decision described the day's activities of December 1, 2005, as "a science tutorial." The court acknowledged that "(d)iabetes can cause great damage to the body. Due to the toxic effects of high glucose on blood vessels, patients with diabetes are predisposed to chronic complications such as kidney failure, blindness, leg ulcers and amputations, heart attacks and strokes."[31]

The treatment of diabetes was revolutionized in the 1990's with the introduction of a class of drugs known as thiazolidinediones ("TZDs"). TZDs were first discovered by Takeda in the 1970s. They are peripheral insulin sensitizers, working within muscles to enhance the effect of insulin in that organ, and thereby to increase the muscles' ability to take glucose from the bloodstream.[32]

The first TZD to be marketed in the United States was troglitazone, known by the commercial name Rezulin. Rezulin, which was developed by Pfizer, first became available in 1997. In May of 1999, two years after Rezulin entered on the market, the Food and Drug Administration approved GlaxoSmithKline's Avandia (whose active ingredient is rosiglitazone). Actos, which was approved by the FDA in July of 1999, is the only other TZD currently approved by the FDA for sale in the United States.[33]

In March 2000, Pfizer withdrew Rezulin from the United States market due to significant concerns about its safety. After Rezulin was withdrawn, Actos and Avandia

essentially split the TZD market in the United States. More recently, research has shown that these two TZDs have a greater positive effect in the treatment of cardiovascular disease than other anti-diabetic drugs, and that Actos in particular has a greater impact than Avandia on lowering cardiovascular risk. Based in part on this research, there is evidence that Actos is becoming the preferred TZD medication.[34]

Actos has been a wildly successful commercial product. It has led the TZD market for new prescriptions written by endocrinologists since February 25, 2000. In October 2001, it became the seventh fastest product in pharmaceutical history to reach $1 billion in annual sales. It was launched in 1999, and by 2003 held 47% of the TZD market, as well as 9.9% of the total OAD market. In 2003, the gross sales of the drug exceeded $1.7 billion.[35]

In the Actos patent litigation, Alphapharm argued that much of Takeda's success was due more to luck than prescience. The core of their argument in this regard: that the commercial success of the drug was due to events that were unforeseen at the time that the patent was issued, such as the withdrawal of its main competitor from the market, and an unexpected rise in obesity with an accompanying increase in the incidence of the disease.[36]

These arguments did not persuade the court. "There is no requirement that the invention be the only successful product in its market niche or the most successful," the decision read. "Moreover, Actos would have been an important and successful invention by any reasonable measure even if the incidence of diabetes had remained unchanged since the time of the invention."

Alphapharm also argued that Takeda's success was more attributable to its marketing efforts, particularly its partnership with Eli Lilly, than the inherent value of the invention. They also unsuccessfully argued that competitors were precluded from fairly entering the market – from the decision:

" Alphapharm has not shown that any of the compounds disclosed by Takeda in its patents were viable candidates for commercial development. Takeda's competitors had every opportunity to develop new compounds that were improvements over the compounds Takeda disclosed. This is exactly what Sankyo did in developing troglitazone, the active ingredient in Rezulin. The patent that protects troglitazone lists the '605 and '902 Patents as prior art. The fact that only one other company has a TZD in the market today, despite the commercial opportunities available for an effective insulin sensitizer, is strong secondary evidence of pioglitazone's non-obviousness.

In making this argument, Alphapharm relies on Merck, 395 F.3d at 1377, but in doing so, reads the case far too broadly. In Merck the patent at issue was a method claim for the use of a particular compound, which was protected by a patent owned by Merck. Because Merck owned the underlying patent, and thus could prevent others from commercially developing the method of use at issue, the court found that the "chain of inferences fails on these facts." The case does not establish that commercial success is not probative simply because a patent holder also holds a prior art patent.

In sum, Alphapharm has not carried its burden of showing that the invention of pioglitazone was obvious. It has searched for a theory of obviousness, and its efforts have proven futile with each iteration of a theory. Alphapharm's Section 355 Statement did not articulate a successful theory of obviousness, and its efforts to create one through the direct testimony of its expert, and yet another one as the trial unfolded all failed. Nothing in the prior art would have given one skilled in the art any reasonable expectation that the creation of pioglitazone would result in the discovery of an anti-diabetic treatment that was efficacious and non-toxic."[37]

Next Steps for Litigants and Consumers

Bladder cancer is not the only risk associated with thiazolidinediones. There have been reports of health problems caused by these drugs for years. In June of 2007, the FDA issued a "black box warning" due to reports of liver and heart problems among patients taking Actos and Avandia. This warning was the result of a Cleveland Clinic study, which found that thiazolidinediones may increase a patient's risk of having a heart attack by up to 42 percent. In addition, that study found that Actos and Avandia can increase the risk for a variety of liver problems, including liver inflammation, hepatitis, elevated liver enzymes (a sign of liver damage) and liver failure. Actos and Avandia can also increase the risk of bone fractures in women.[38]

With scores of suits now being filed against Takeda, the FDA will be monitoring the product, and a U.S. Judicial Panel dedicated to Multidistrict Litigation will decide if Actos litigation should be grouped together for pretrial case management. As consumers, the message from the FDA (as stated in their warnings written about above) is clear: patients taking Actos should consult their physician at the first sign of lower abdomen or back pain, or blood or red color in urine. Actos patients are further instructed to cease the taking of Actos if they're receiving treatment for bladder cancer.

The documented link between Actos and increased risk of bladder cancer is significant to both Takeda and patients. Bladder cancer is the fifth most common cancer in the United States39 while Actos has risen to be the dominant Pioglitazone-based diabetes medication with annual sales in excess of $5 billion. Millions of patients take this drug every day. Many patients, if not most, do not know of or understand Actos' link to bladder cancer. As Takeda continues to heavily market Actos, more and more patients will endure this documented side effect.

1 Brett Emison (brett@lelaw.com) is a partner at the law firm of Langdon & Emison. A member of the AAJ's Marketing and Client Service committee, he has led legal teams on behalf of injured victims and their families in cases nationwide. He chairs the firm's mass torts division. 2 Takeda 2011 Annual Report (available at http://www.takeda.com/pdf/usr/default/ar2011e_42865_3.pdf) 3 Ibid. 4 Ibid. 5 Ibid. 6 Ibid. 7 "Update on ongoing European review of pioglitazone–containing medicines," European Medicines Agency, September 6, 2011. http://www.ema.europa.eu/ema/index.jsp?curl=pages/news_and_events/news/2011/06/news_detail_001275.jsp&mid=WC0b01ac058004d5c1&murl=menus/news_and_events/news_and_events.jsp&jsenabled=true8 Ibid.9 FDA Drug Safety Communication: Update to ongoing safety review of Actos (pioglitazone) and increased risk of bladder cancer; June 6, 2011. Found at: http://www.fda.gov/Drugs/DrugSafety/ucm259150.htm10 Ibid.1111 http://www.newsinferno.com/pharmaceuticals/new-fda-actos-bladder-cancer-warning-debuts/12 Ibid.13 FDA Drug Safety Communication: Ongoing Safety Review of Actos (pioglitazone) and Potential Increased Risk of Bladder Cancer After Two Years Exposure (http://www.fda.gov/Drugs/Drugsafety/ucm226214.htm)14 Ibid.15 http://www.newsinferno.com/pharmaceuticals/new-fda-actos-bladder-cancer-warning-debuts/16 Ibid.17 Ibid.18 Ibid.19 "European Agency Holds Firm on Actos," Chris Kaiser, MedPage Today, October 21, 2011. Found at: http://www.medpagetoday.com/Cardiology/Diabetes/2916220 Ibid.21 Ibid.22 "Regulatory Action on Rosiglitazone by the U.S. Food and Drug Administration," New England Journal of Medicine, Janet Woodcock, M.D., Joshua M. Sharfstein, M.D., and Margaret Hamburg, M.D.N Engl J Med 2010; 363:1489-149123 Ibid.24 Ibid.25 Takeda Chemical Industries, Ltd. v. Mylan Laboratories, Inc. Nos. 03 Civ. 8253(DLC). S.D.N.Y.,2006.26 Ibid.27 Ibid.28 Ibid.29 Ibid.30 Ibid.31 Ibid.32 Ibid.33 Ibid.34 Ibid.35 Ibid.36 Ibid.37 Ibid.38 New Bladder Cancer Warning for Diabetes Drug Actos, Jennifer Warner. WebMD Health News. June 16, 2011. Found at: http://www.webmd.com/cancer/bladder-cancer/news/20110616/new-bladder-cancer-warning-for-diabetes-drug-actos39 University of Texas MD Anderson Cancer Center (found at http://www.mdanderson.org/patient-and-cancer-information/cancer-information/cancer-types/bladder-cancer/index.html)

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> lay witness. But is it impermissible deception to seek to friend a witness without disclosing the purpose of the friend request, even if the witness is not a represented party and thus, as set forth above, subject to the prohibition on ex parte contact? We believe that it is.

San Diego Cal. Bar Assn. Legal Ethics Op. 2011-2.

The Philadelphia Bar Association's Professional Guidance Committee similarly advises that the practice of "friending" potential witnesses without disclosing the purpose of the "friend" request violates Rule 8.4.

> [T]he Committee believes that the proposed course of conduct contemplated by the inquirer would violate Rule 8.4(c) because the planned communication by the third party with the witness is deceptive. It omits a highly material fact, namely, that the third party who asks to be allowed access to the witness's pages is doing so only because he or she is intent on obtaining information and sharing it with a lawyer for use in a lawsuit to impeach the testimony of the witness. The omission would purposefully conceal that fact from the witness for the purpose of inducing the witness to allow access, when she may not do so if she knew the third person was associated with the inquirer and the true purpose of the access was to obtain information for the purpose of impeaching her testimony.

Phila. Bar Assn. Prof. Guidance Comm. Op. 2009-02.

By contrast, the New York City Bar Association is more forgiving of conduct. Specifically, it determined:

> While there are ethical boundaries to such "friending," in our view they are not crossed when an attorney or investigator uses only truthful information to obtain access to a website, subject to compliance with all other ethical requirements.

New York City Bar Assn. Op. 2010-02.

As with many of these common practices, the other states have not yet ruled on whether this practice is permissible.

2. Do Not Facebook "Friend" the Judge

(Rule 8.4: Misconduct)

"Friending" the judge is problematic because it "reasonably conveys to others the impression that these lawyer 'friends' are in a special position to influence the judge." Fla. Jud. Advisory Comm. Op. 2009-20.

One of the primary concerns is that this public announcement of a relationship between a judge and an attorney creates the appearance of impropriety.

As a result, both California and Florida have established a blanket prohibition against judges "friending" attorneys who appear in front of them. See California Judges Ass'n Judicial Ethics Comm. Op. 66 (2010), and Fla. Jud. Advisory Comm. Op. 2009-20. Similarly, attorneys should be cautious when "friending" judicial staff. Fla. Jud. Advisory Comm. Op. 2009-20.

Other states, including New York, Ohio, South Carolina and Kentucky permit Facebook "friending" between lawyers and judges so long as the underlying relationship doesn't otherwise impugn the integrity and impartiality of the judiciary. See Ky. Jud. Ethics Op. JE-119, (2010); N.Y. Advisory Comm. on Jud. Ethics Op. 08-176 (2009); Ohio Sup. Ct. Bd. of Comm'rs. Op. 2010-7; and S.C. Advisory Comm. on Standards of Judicial Conduct Op. 17-2009.

The remaining states have yet to issue rulings on the matter. The prudent practitioner might want to avoid courting controversy by "friending" a judge. Whatever benefits a Facebook friendship might bring, they do not outweigh the risk of having that relationship questioned in a very public and uncomfortable way. See N.C. Jud. Standards Comm. Op. 08-234 (2009).

3. Do Not Criticize the Judge

(Rule 8.2: Judicial and Legal Officials)

The Florida Bar was quick to discipline an attorney for posting comments on a local listserv about a judge's regular practice of expediting criminal cases, depriving him of enough time to prepare for trial. The attorney called the judge an "evil, unfair witch" and called into question her mental competency. See The Fla. Bar v. Conway, 996 So.2d 213 (2008).

It may seem obvious that calling a judge an "evil, unfair witch" could quickly get the attention of your local bar, but even relatively subtle comments about a judge can create real problems for an attorney under Rule 8.2. For instance, a district attorney in New York was recently censured for statements he released to the press about a local judge's ruling. Unhappy that the judge had decided that a defendant's lawsuit against the DA's office created a conflict of interest that required the appointment of a special prosecutor, the DA released the following statement:

> [The judge's] decision is a get-out-of-jail-free card for every criminal defendant in New York State. His message to defendants is: "If your DA is being too tough on you, sue him, and you can get a new one." The Court's decision undermines the criminal justice system and the DAs who represent the interest of the people they serve.

Albany D.A. Censured for Criticism of Judge in a Pending Case, The New York Law Journal (May 25, 2012).

Even though the judge's decision was reversed, the attorney was still censured. Even accurate criticism of the judiciary can invite punishment.

4. Listserv Communications Are Public Conversations

It is not unusual for attorneys to post on more than one listserv relating to their practice. These posts may feel like private messages among friends and colleagues, but this "speech" is public, and depending on what is disclosed, may qualify as ex parte communications, violate client confidentiality, or criticize a judge implicating Rule 8.2. The Los Angeles Bar Association examined the perils of listserv communications.

> A listserv is a public conversation. It is transmitted through the World Wide Web, which, as a whole, has been analogized to a public bulletin board. Even communicating through a closed listserv is like e-mailing a letter to the editor of a newspaper, or participating in a call-in radio show or a conference call, via e-mail.

Los Angeles Co. Bar Assn. Prof. Resp. and Ethics Comm. Op. 514 (2006).

The Oregon State Bar also addressed whether listserv communications violate client confidentiality. Notably, it held that even emails or posts posing hypothetical questions may violate the rules governing confidentiality without the client's informed consent.

> Framing a question as a hypothetical is not a perfect solution, however. Lawyers face a significant risk of violating Oregon RPC 1.6 when posing hypothetical questions if the facts provided permit persons outside the lawyer's firm to determine the client's identity. Where the facts are so unique or where other circumstances might reveal the identity of the consulting lawyer's client even without the client being named, the lawyer must first obtain the client's informed consent for the disclosures.

Oregon State Bar Op. 2011-184.

5. Do Not Email Your Client at His Work Email Address (Rule 1.1: Competence; Rule 1.6: Confidentiality of Information)

If you reasonably expect to communicate with your client by email, it is your duty to advise your client against using a work email address, and/or accessing private emails on his work-issued computer or mobile device.

Last summer, the ABA added new language to Rule 1.6 that explicitly expanded the scope of an attorney's duty to protect a client's confidential email: "A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." ABA Commn. on Ethics 20/20 (2012).

The ABA found that lawyers are required "to take reasonable care to protect the confidentiality of client information, including information contained in email communications made in the course of a representation." ABA Formal Ethics Op. 11-459

> [A] lawyer should ordinarily advise the employee-client about the importance of communicating with the lawyer in a manner that protects the confidentiality of email communications, just as a lawyer should avoid speaking face-to-face with a client about sensitive matters if the conversation might be overheard and should warn the client against discussing their communications with others. **In particular, as soon as practical after a client-lawyer relationship is established, a lawyer typically should instruct the employee-client to avoid using a workplace device or system for sensitive or substantive communications, and perhaps for any attorney-client communications, because even seemingly ministerial communications involving matters such as scheduling can have substantive ramifications.**

Id. (emphasis added).

6. Do Not "Friend" Your Client and Advise Your Client Not to Discuss the Case on Facebook

Your client may inadvertently waive his attorney-client privilege normally applied to confidential communications if he talks about your representation on social networking sites. In ***Lenz v. Universal Music Corp.***, No. 5:07-cv-03783 JF, 2010 WL 4789099 (N.D. Cal. Nov. 17, 2010) the court held "[w]hen a client reveals to a third party that something is 'what my lawyer thinks,' she cannot avoid discovery on the basis that the communication was confidential." *Id.*

7. Do Not Discuss Your Legal Practice on Facebook

The same rules that limit advertising and other types of communications, apply to social networking. As a result, you want to make sure that any posts, messages, comments or videos are permitted by the rules of your jurisdiction, and you want to be sure to retain copies of all such communications.

The rules about what you can discuss on Facebook, and other social networking sites vary. For instance, the Florida Bar recently published some guidance to attorneys using social media. In Florida, an attorney may not be subject to the advertising rules *if* he is using social networking sites for the sole purpose of maintaining social contact with *family and close friends.* Fla. Bar Guidelines for Networking Sites, approved by the Standing Comm. on Advertising (Rev. May 8, 2012).

8. Do Not Use Dropbox or Google Docs

(Rule 1.6: Confidentiality of Client Information)

The new language added to Rule 1.6 this past summer is of concern for those of us using Google Docs, Dropbox or other cloud-based storage services. Just this month Steven W. Teppler, co-chair of the ABA E-Discovery and Digital Evidence Committee was quoted in the ABA Journal, discouraging the use of these kinds of services.

> A lot of lawyers use Dropbox to store information. But its terms of service say that if it receives a legal inquiry, which may or may not include a subpoena, it can choose to release your client's information. I tell people not to use Dropbox, but it's the latest, hottest thing. Failing to manage risk at that level is dangerous. You're saying, "I built a house. It has 10 doors. I put locks on 9 of them, and it hasn't been robbed in 2 years. So it's safe."

G.M. Filisko, *Reality Bytes: New ABA Rules Require You to Get With Tech Program – Like it or Not*, The ABA Journal (April 1, 2013).

Conclusion

There is no way to completely insulate your practice from the perils of the Internet. However, we need to get better at establishing clear distinctions between our personal and professional online presence. We also need to pay attention to the way we use technology. With the changes adopted by the ABA this summer, we can no longer afford to delegate our technological decisions to non-lawyers who may not be as concerned about the terms of service as an ethical member of the bar should be.

We need to start exercising more and better discretion about how and when we use the Internet. As interesting as these opinions may be, it is doubtful that any one of us would enjoy our emails and blog posts and office practices being scrutinized and made examples of as the legal community struggles to define the boundaries of the ethics of the Internet. No one wants to set precedent in the legal opinion censuring them.

New **STLA** Members

As you know, membership in the Southern Trial Lawyers Association is by invitation only, and thus the outstanding membership that we have! If there is someone you would like to invite to join, please send me an email with their name and mailing address, and I will put an application in the mail to them. If you would like to see a complete list of members, visit our Web site: www.southerntriallawyers.com.

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THE JUSTLAW JUROR'S BOX

WHAT HAPPENS HERE, STAYS HERE...UNLESS IT SHOULDN'T

STLA Past President Chris Glover educates the audience on helicopter product defect cases

Charles Zauzig III from Woodbrige VA receiving the W McKinley Smiley Jr. Lighthouse award (Randy Hall is pictured on the right)

Gary Green receiving the Tommy Malone Great American Eagle Award from Randy Hall

Gary Gober presenting Pam Mullis and Bonnie Mullis with the Warhorse Award in honor of Bo Mullis

(Left to Right) Vincent Glorioso, Gary Green, Jeff Nadrich at the Warhorse Award ceremony