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Report of the Defense Research Institute 1968

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Report Of The Defense Research Institute 1968*

JAMES D. GHIARDI, *Research Director*
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INTRODUCTION

DRI has now completed eight years of operation, six of them in Milwaukee. 1968 has been truly the "year of the plans" and much time and effort has been devoted to analyzing, critiquing and disseminating information on the various no-fault plans. 1969 promises to be even more active, not only in the development of new plans, but in their implementation, refinement and promulgation.

In cooperation with the International Association of Insurance Counsel, the Federation of Insurance Counsel and the Association of Insurance Attorneys, a positive program has been developed to improve the present system for handling tort claims and litigation. The blueprint for the program was outlined in "Justice In Court After The Accident." It is hoped that 1969 will result in even greater success in our efforts to implement a positive program. Improvement of the tort insurance system and the countering of no-fault plans will continue in close cooperation with all defense lawyer groups, the insurance industry and other interested organizations. The theme of our improvement will continue to be the public interest and welfare.

This report is intended to highlight activity during the past year. With the many-faceted functions of DRI, it is very difficult to summarize activity without omitting a large segment of the actual day-to-day operations.

MEMBERSHIP

As of December 31, 1968, DRI membership stood at an all-time high of 5,347 individuals, 362 companies and 236 subscribers to DRI publications. Although 569 new individuals became members, 282 were dropped for various reasons, leaving a net gain of 287. Of this number, 106 were added by the Association of Insurance At-

torneys which approved automatic membership for its prime members in July. Corporate growth was gained only in the area of noninsurance companies, where 27 were added to the rolls and 8 were lost, for a net increase of 19 companies. Of concern is the fact that insurance company membership in DRI decreased during 1968. Seven insurance companies became DRI members, but 12 dropped their DRI membership for a net loss in this area of 5. Consolidation of insurance companies has accounted for two of these losses and it appears that this will be an increasing problem in 1969.

LOCAL DEFENSE GROUPS

Since the meeting at the Broadmoor, Colorado Springs, Colorado, the South Carolina Defense Attorneys Association has been formed, bringing the total of active local defense groups to 64, with 21 in various stages of organization. Interaction between these groups and the Defense Research Institute continues to expand, notably in joint sponsorship of programs, seminars and institutes, as well as in opposition to proposals of "no-fault" compensationists. Encouraging also is the growing awareness among local defense groups that they, coupled to the efforts of DRI, are a major force of meeting the challenges to the tort liability system. For example, Texas, Iowa, Minnesota, Oregon and others have utilized DRI materials and have formed programs to meet the onslaught of those who would circumvent the adversary-jury system of determining reparations for the injured in automobile accidents. Part of this liaison is achieved through the Local Associations Bulletin, a publication which shortly will be revised to become more personal and to be issued more frequently. Distribution of DRI publications to state judges sponsored by these groups continues to grow. In addition, the sponsorship of law school programs, in cooperation with DRI, is constantly expanding.

*Prepared for the Annual Meeting of DRI held January 25, 1969.

PUBLICATIONS AND FOR THE DEFENSE

The backbone for DRI's educational efforts has been its publications and monthly newsletter. Each year has seen an expanding program in the development of major tools to assist the defense bar, the insurance industry, and the other members of DRI. Continued improvement in the quality and the practicality of the publications is the goal that is sought.

During the past year, 24 separate publications have been prepared and distributed. These include the following:

THE CIVIL JURY TRIAL — A
WORKBOOK
THE PHYSICIAN PATIENT PRIVILEGE IN PERSONAL INJURY LITIGATION
PRODUCTS LIABILITY GUIDES FOR THE CORPORATE EXECUTIVE II
UNINSURED MOTORIST PROTECTION
JUSTICE IN COURT AFTER THE ACCIDENT
INSURER'S DUTY TO DEFEND
RECENT DEVELOPMENTS IN THE CANCELLATION, RENEWAL AND RECISSION OF AUTOMOBILE INSURANCE POLICIES
CURRENT DECISIONS: 1967
BRIEF BANK 1966-67 SUPPLEMENT
BRIEF BANK INDEX SUPPLEMENT JULY 1968
1968 MEMBERSHIP ROSTER
SPECIAL BULLETINS NO. 7 and 8
L A B, Vol. 3, No. 1 and 2
THE DEFENSE MEMO (9 issues)

In addition, 11 Special Reports were prepared and sent to officers, corporate members, insurance company members, and local defense groups. These reports covered such topics as Products Liability, NACCA Activities, and recent developments in the auto accident reparations controversy.

Ten issues of *FOR THE DEFENSE* were prepared, published and distributed. Publication of the newsletter increased from 11,293 copies in January of 1968 (including 2,339 copies to state judges and 432 copies to federal judges) to 12,214 copies in December of 1968 (including 2,844 copies to state judges and 453 copies to federal judges).

The following publications are in the process of being completed for publication during 1969:

ECONOMISTS' TESTIMONY (an expansion and update of the previous pamphlet)
CURRENT DECISIONS: 1968
BRIEF BANK INDEX 1966-68 SUPPLEMENT
FOR THE DEFENSE INDEX
ARCHITECTS' AND ENGINEERS' LIABILITY (monograph)
OFFICERS' AND DIRECTORS' LIABILITY (monograph or reprint)
PUNITIVE DAMAGES (monograph)
UNIT-OF-TIME ARGUMENTS (monograph or reprint)
SPECIAL BULLETIN NO. 9
LAB
DEFENSE MEMOS (for the next 9 issues of *FOR THE DEFENSE*)

LAW SCHOOL PROGRAMS

The law school program, by introducing fledgling lawyers to the philosophy of the defense bar, has developed into an educational tool of immense potential influence on the future of the law.

Sixteen programs on insurance litigation or the civil jury trial, more than in any previous year, have been held for the following 21 schools: Stamford University; University of North Carolina; University of Richmond; University of Kansas; University of Oklahoma; Denver University; University of North Dakota; University of Alabama; Drake University; Syracuse University; Ohio Northern University; Marquette University; in Chicago, the University of Chicago, Northwestern University, DePaul University, Loyola University, Chicago-Kent and John Marshall; University of Connecticut; Wyoming University; and Cleveland-Marshall.

The programs were arranged by regional vice presidents and local area chairmen, cooperating with local defense groups and the insurance industry. The following insurance companies and groups furnished planning assistance and financial aid: Travelers; Nationwide Mutual; INA; American Family; St. Paul; Nodak Mutual; State Farm; National Farmers Union; Celina Insurance Group; Kemper Insurance Group; Buckeye Union; Wisconsin Claims Council.

Six of the 1968 programs used the DRI *Civil Jury Trial Workbook*, a new edition of which appeared in 1968. Looking to the immediate future, a program is scheduled at Des Moines for Drake University and the University of Iowa on February 13 and 14, 1969, and plans are being formulated for a program at the University of Wisconsin.

LAW INSTITUTES

The Law Institutes Committee sponsored three joint programs with PLI during the past year in New York City, New Orleans and Las Vegas. The committee is exploring co-sponsorship of future programs on a nationwide basis with groups other than PLI. Comprehensive outlines and plans for half-day or full-day institutes have been drawn covering the subjects of Products Liability and "No-Fault" Plans. In addition, work will continue on the subjects of insurance litigation and professional liability. During the past year, DRI cooperated with numerous local defense groups in planning and presenting seminars and institutes.

DRI was represented at the National Conference on Continuing Legal Education and has agreed to abide by the standards of fair conduct and voluntary cooperation as approved by the Conference, the purpose of which is to provide for a coordinated and cooperative continuing legal education program.

The Board of Directors has authorized the Law Institutes Committee to develop a national program providing for three or four seminars a year to be co-sponsored with other existing groups. 1969 will be occupied with the development of these national programs.

SPEECH BANK AND SPEAKERS BUREAU

The Speakers Bureau and Speech Bank continue to be an important segment of our educational effort. The number of speeches in the DRI speech bank totals 241. During the year, there have been 55 individual requests for speeches on file, and DRI personnel have participated in 186 functions. Demand remains heavy for the DRI speech kits, particularly the ones dealing with "no-fault" plans and "Justice In Court After The Accident." A synopsis

of the American Insurance Association proposal has also been included in the Keeton-O'Connell kit. A listing of all speakers and their particular topics, according to region, has been completed and is being used in suggesting speakers for the growing number of requests to the DRI Milwaukee office. Publicity has been sought for all speakers by the Milwaukee office with increasing success.

COMMITTEES — PUBLICATION AND EDUCATION

The publication and educational program of DRI is implemented by the work of committees other than those previously listed. The Product Liability Committee has been particularly active in developing materials for publication. The work of this committee has been widely acclaimed and has had a particular impact on the non-insurance corporation members of DRI. This area of the law is expanding at a rapid pace and the work of the committee must continue to keep abreast of developments. The Professional Liability Committee and the Aerospace Committee are working on materials for publication. The results of their work will be published in 1969. In addition, both committees are coordinating their efforts with companion committees in IAIC and FIC. The Practice and Procedure Committee continues to develop its monthly column "Rx For The Defense." In addition, it is working with the staff and the Medical-Legal Committee in conjunction with the medical consultant to develop additional materials dealing with the medical aspects of tort liability.

The Medical-Legal Committee has undertaken several major projects since its appointment last February. The survey on utilization review has been completed and an article entitled "Liability of Physicians Who Serve on Utilization Review Committee" is being prepared for publication in *FOR THE DEFENSE*. A survey of insurers who write medical professional liability insurance has been completed and a publication dealing with the survey will be presented to the Board. The committee, through the auspices of the Louisiana State Medical Society, solicited membership in DRI of the 49 state medical societies which had not become members. The committee conducted a survey of the use of medical texts and periodicals for cross-ex-

amination purposes. The findings of the survey will be published in *FOR THE DEFENSE*. The committee has solicited Dr. John Adriani to write an article on drug package inserts and their value as evidence for *FOR THE DEFENSE*.

In November, Dr. Norbert Enzer assumed his new duties as DRI medical consultant. The January 1969 issue of FTD published Dr. Enzer's first in a series of articles concerning the use of hospital records. His column will appear regularly in FTD and he will also assist in the preparation of other DRI publications. Dr. Enzer is also working with the committee to develop institutes and seminars, with special emphasis on malpractice problems, and will also appear as a medical-legal lecturer.

The Workmen's Compensation Committee prepared a Defense Memo entitled "Workmen's Compensation: Occupational Diseases" which appeared in the June issue of *FOR THE DEFENSE*. Other articles have been prepared and submitted to the editors of FTD. The committee has been coordinating its work with its counterparts in IAIC and FIC. Particular areas of responsibility are being delegated to each of the organizations to prevent overlapping and duplication of work and to render the defense effort more efficient. The committee is currently studying proposed federal legislation and related testimony dealing with the establishment of a national commission to evaluate state workmen's compensation laws. The bill, introduced in the Senate last June, is opposed by the insurance industry as a measure which would put the federal government substantially into the business of supervising the occupational health and safety activities now handled by the states.

DEFENSE INFORMATION OFFICE

The Defense Information Office has been managed by DRI since October 1, 1965. Since that time, it has handled 1,530 requests for assistance. The past year has seen the office expanding its facilities and servicing more members. In 1968, there were 150 requests for briefs; 129 requests for expert witnesses; 72 requests for economists' transcripts; and 141 individual inquiries for DIO materials. The Brief Bank now contains more than 2,200 cases, 267 of which were added during 1968. In addition,

150 cases and articles have been added to miscellaneous research files of DRI. The Expert Witness Index has increased to a current listing of 674 names, and the economists' transcripts on file now number 28.

Colleen A. Roach has been the director of the Defense Information Office since its transfer to Milwaukee in October of 1965. Miss Roach terminated her employment with DRI December 31, 1968, in order to enter the private practice of law. Donald J. Hirsch, assistant research director, has been named acting DIO director. Grateful acknowledgement is expressed to the American Insurance Association, the American Mutual Insurance Association, and the National Association of Independent Insurers for their continued financial and moral support of the Defense Information Office.

ARBITRATION

Prior to 1968, only four arbitration disputes were submitted. During 1968, we have had nine disputes submitted. Seven of these have been concluded and two are in the hearing stage. The interest that has been shown and the activity that has been engendered indicates a recognition of the great potential that this service has. For example, we have distributed, on request, 1,505 copies of the Arbitration Rules during 1968.

The panel of arbitrators has been increased to 690 attorneys. With the quality of the personnel and the broad geographical distribution of the panel, the arbitration program should become an increasingly valuable service. Publicity efforts and promotions continue, and it is hoped that 1969 will see an increased use of the DRI arbitration service.

LIAISON

DRI continues to promote its liaison with various allied groups. Such liaison is carried on by many of the committees of DRI, but several of them merit particular comment.

The major activity of the ALI Liaison Committee during 1968 consisted of an attempt to have the Council of the American Law Institute alter its position, *vis-à-vis* § 402A Restatement (Second) Torts, and return to the view that the Restatements

should state the law as it is and not as those who attend its meetings think the law should or will be. In that regard, the ALI Liaison Committee submitted a memorandum to the Council which was subsequently published as a Defense Memo in 9 *FOR THE DEFENSE*, May 1968. Although the Council refused to take the action requested, it appears that the memorandum made an impact upon the Council and the Director of the American Law Institute. The ALI Liaison Committee believes that it is imperative for defense lawyers to make their opinions known to ALI. This can only be done if more defense attorneys join ALI and participate at its meetings. In view of the possible consideration of extending strict liability to cover ground damage caused by aircraft, programs to oppose this extension are being developed in conjunction with the aircraft industry, aircraft insurers, and the DRI Aerospace Committee.

The American Bar Association Liaison Committee has been active during the past year keeping informed on developments in the ABA. Much of this activity has concerned itself with the Special ABA Committee on Automobile Accident Reparations. The viewpoint of DRI and the other defense lawyer organizations was presented to the committee. The report of the ABA special committee will be presented to the House of Delegates of ABA for their consideration at their January 1969 meeting.

The Insurance Information Committee has maintained liaison with the various state and national insurance information services. There has been no attempt during the past year to sponsor a meeting of the various insurance information services, but it is hoped that the services themselves will take the initiative to hold such a conference. If such a conference is held, DRI will participate.

DRI continued in 1968 its program of monitoring activities of the plaintiffs' bar. Since late 1967, NACCA has presented 21 seminars. In addition, mid-winter and annual conventions were held. The DRI office arranged to have five of the NACCA seminars monitored on Products Liability, three on Courtroom Medicine, and six on Liability Insurance Litigation. The mid-winter and annual conventions were also monitored. The reports of the monitors are examined by the DRI staff and ex-

cerpts used for the DRI Special Bulletins, the latest of which (No. 8) was published last fall. The Special Bulletins are designed to help keep DRI members abreast of new tactics and techniques of plaintiffs' attorneys. In addition, information bulletins were sent to DRI corporate members, local defense groups, the Board of Directors and State Chairmen. DRI will continue to monitor a representative number of NACCA seminars throughout the country, as well as the two conventions, in 1969. At the NACCA convention in July, an amendment to the organization's constitution was rejected which would have allowed defense attorneys to join. Now, all attorneys except those regularly engaged in defense practice may become NACCA members.

The Senior Advisory Council, composed of all former regularly elected directors and officers, was activated during 1968. This committee is to consider and advise DRI on matters of basic policy and finance in consultation with the Projects and Objectives Committee. Their assistance and cooperation will prove invaluable to the officers and directors in maintaining the proper liaison with the insurance industry and other groups with common interests. The Congressional Liaison Committee has kept the Board of Directors informed on legislation proposed in, pending in, or adopted by the Congress of the United States that was of interest to the defense effort and the right of defendants in civil litigation. This committee has been particularly helpful to the Board and its activity should increase during 1969 with the expanded legislative studies being carried on in Washington. These include the Department of Transportation investigation, the investigations by the Senate Anti-Trust Committee, and the House Judiciary Committee. In addition, the Products Safety Commission has been active and it would appear that their activities will increase. If a Workmen's Compensation Study Commission is created, this will add another facet to the work of the Congressional Liaison Committee.

The Coordinating Committee, consisting of representatives from IAIC, FIC, DRI and the Association of Insurance Attorneys, has met several times. Each organization is working on the implementation of the recommended positive programs for reform incorporated in "Justice In Court After

The Accident." The work of the Coordinating Committee has been enhanced by the fact that representatives of the three national defense lawyer organizations have met constantly with the DRI Board of Directors and officers. The coordinated efforts of the groups in opposition to the "no-fault" plans and the implementation of the positive program will result in a better and more widely publicized defense effort. This coordination has resulted in a closer working relationship with the Defense Research Committee of IAIC and the DRI staff. Preparation and publication of DRI materials in the Federation Quarterly and the INSURANCE COUNSEL JOURNAL continues.

PROJECTS AND OBJECTIVES COMMITTEE

During the past year, the following subjects were considered by this committee: incentives to attract young lawyers to DRI through lower membership fees; law firm memberships; an efficiency study of DRI operations by outside analysts; strengthening liaison between DRI and local defense groups, as well as gaining more DRI members in these groups; evolution of the fault system; professional liability for lawyers and the securing of malpractice coverage; improvement of the DRI arbitration program; use of DRI seminar teams; how to keep alive such topics as contingent fee abuse, ad damnum and collateral source rule; use of filmed or partly-filmed speeches by DRI; legislative problems; the conflict between DRI and others over divergent viewpoints regarding "no-fault" plans; law student internship programs; and utilizing films of other organizations in the DRI program. The committee continues its deliberations of many of these topics and has recommended to the Board various areas for study and action.

PUBLIC INFORMATION

Publicity on key DRI themes continues to increase and to gain in effectiveness. The scope and breadth of the DRI public information program is beyond the current report. Detailed reports are submitted quarterly to the Board of Directors.

During 1968, emphasis on publicity to professional and manufacturing publications was increased because of the expand-

ed DRI activity in the fields of products and professional liability. Insurance and legal publications continue to publish DRI releases with regularity. Subject to limitations of budget and manpower, publicity to the mass media on topics which involve the general public will be more thoroughly developed. Cooperation and exchange of materials with key insurance information services continues to grow, with the result that coordinated effort is gained. In order for DRI to have the necessary impact in the development and moulding of public opinion, greater concern with publicity will have to be shown by each and every member in cooperation with the Information Director.

LEGISLATION

The Legislation Committee of DRI has been particularly active in the drafting of sample legislation. Sample bills and supporting research have been completed in eight areas: Advance payment, Double payment (collateral source), Voluntary dismissal, Split trial, Supersedeas bond, Ad damnum, Summary judgment, and Waiver of medical privilege. In addition, proposed legislation dealing with Contingent fees and Comparative negligence have been submitted to the Legislation Committee for their consideration and action. The Board of Directors has authorized an expanded distribution and use of the sample legislation. Meanwhile, the Legislation Committee is considering a revision of its operational methods, an expanded program of publicity and other specific areas for research and development.

ADMINISTRATION

The DRI Board of Directors has met three times during the past year and the Executive Committee, four times. The officers, committees, regional vice presidents, state and area chairmen, and other lawyer volunteers continue to donate thousands of man-hours of their time to the DRI effort. The staff consists of 12 full-time employees, three part-time student assistants and three part-time consultants. In addition, one opening for an assistant research director now exists.

The financial status of DRI is sound and an increased operating budget for the 1968-69 fiscal year was made possible primarily by the increase of individual mem-

bership dues from \$25.00 to \$35.00 effective September 1, 1968. This has enabled the Milwaukee office to expand its facilities and to increase its space.

Close coordination and liaison is maintained by the DRI staff with the editors of the *INSURANCE COUNSEL JOURNAL* and the *Federation of Insurance Counsel Quar-*

terly; the publishers of the *Defense Law Journal*, Allen Smith Company; and the Claims Bureau of the Association of American Railroads and the National Association of Railroad Trial Counsel. This coordination and liaison has resulted in joint projects and publications which have contributed greatly to the defense effort.

DIO Briefs Reduce Defense Costs

The Defense Information Office Brief Bank, maintained by DRI, provides an efficient means for defense counsel and insurance companies to reduce defense costs and enhance service to clients. Contributions to the brief bank of all briefs, trial and appellate, plaintiff and defendant, are needed to expand and update the service provided. Briefs involving questions of automobile liability, insurance coverage, general liability, products liability, professional liability and workmen's compensation are particularly welcomed.

Suggested procedures to assure continuous contributions so that DIO will receive copies of all briefs prepared as a matter of routine are: a letter of instruction to the brief printer; or a check-off procedure for the office secretary responsible for distribution. Duplicate copies of briefs, where available, are appreciated.

The procedure for utilization of brief bank services and order blanks for the Brief Bank Index can be obtained upon request.

Defense Information Office
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Milwaukee, Wisconsin 53233